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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 787

SOUTHERN RAILWAY COMPANY AND SOUTHERN RAILWAY, CAROLINA DIVISION, PETITIONERS,

vs.

MARY ELIZABETH DANTZLER, AS ADMINISTRATRIX OF THE ESTATE OF LAWRENCE KEITT DANTZLER, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

PETITION FOR CERTIORARI FILED MARCH 11, 1932

CERTIORARI GRANTED APRIL 18, 1932

(36,601)

( )

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[fol. 1]

IN SUPREME COURT OF SOUTH CAROLINA

Statement

This action was commenced by the plaintiff in May, 1924, to recover $100,000.00 damages for the alleged wrongful death of her intestate, Lawrence Keitt Dantzler, while in the employ of the defendants as a locomotive engineer, as the result of injuries received in a head-on collision between two trains of the defendants at or near Stilton, in Orangeburg County, South Carolina, on January 3, 1924, the said intestate being employed and the defendants being engaged at said time in interstate commerce.

The case was tried at the September, 1930, term of the Court of Common Pleas of Barnwell County before his Honor, Judge T. S. Sease, and a jury. At the conclusion of the introduction of all the evidence the defendants made a motion for the direction of a verdict in their favor, which motion was overruled and the case submitted to the jury, who returned a verdict in favor of the plaintiff for $12,500.00. A motion for a new trial was made and refused.

[fol. 2] In Court of Common Pleas of Barnwell County

Mary Elizabeth Dantzler, as Admx.,

vs.

Southern Ry. Co.

Complaint

Complaint alleges:

1. That the Plaintiff is the duly appointed and qualified administratrix of the estate of Lawrence Keitt Dantzler, who came to a wrongful death, and who died intestate.

2. That at the times hereinafter mentioned the Defendant Southern Railway Company was, and still is, a common

carrier railroad corporation, duly authorized by law, and having capacity to sue and be sued.

3. That at the times hereinafter mentioned the defendant Southern Railway—Carolina Division—was and still is, a common carrier railroad corporation, duly organized and established under the laws of the State of South Carolina, having capacity to sue and be sued.

4. That at said times the Defendants owned and operated or operated lines of railroad through the Counties of Orangeburg and Barnwell, in the State of South Carolina, together with their cars, locomotives, tracks, station houses, and all other usual and useful appliances and appurtenances.

5. That the Defendants at said times were engaged as common carrier railroads in interstate commerce.

6. That on the third day of January, 1924, the intestate Lawrence Keitt Dantzler was employed by the Defendants as a locomotive engineer.

7. That on the third day of January, 1924, while employed by the Defendants as a locomotive engineer and while engaged in the discharge of his duties as such in the transaction of intrastate commerce, at or near Stilton, in [fol. 3] Orangeburg County, in the State of South Carolina, owing to the joint, several and concurrent wilfulness, wantonness, recklessness, negligence and carelessness of the Defendants in the several particulars hereinafter stated, the intestate Lawrence Keitt Dantzler was mortally wounded in and upon his body, having been caught in a "head-on" collision between the locomotive drawing his train and another locomotive moving in the opposite direction, both being owned and operated by the Defendants, so that he died shortly afterwards.

8. That such injuries, and consequent death, of the intestate were occasioned by the following joint, several and concurrent acts of wilfulness, wantonness, recklessness, carelessness and negligence of the Defendants, to-wit: in not providing a safe and suitable place wherein and whereon the intestate employe could perform his work; in not providing safe and suitable appliances and instrumentalities with which the intestate employe could safely per-

form his duties; in failing to furnish safe and competent agents, officers and employes to direct the movements of the two trains; in furnishing unsafe and incompetent agents, officers and employes to direct the movement of the two trains; in failing to give proper orders for the movement of the two trains which were in collision; in giving wrong and improper orders for the movement of the two trains which were in collision; in noa giving proper signals for the movements of the train on which the intestate employe was working; in giving wrong and improper signals for the movement of the train on which the intestate employe was working; and owing to the negligence of the agents, officers and employes in directing the movements of the two trains in collision.

[fol. 4] 9. That the estate of the intestate employe has sustained damages to the amount of one hundred thousand dollars on account of his wrongful death.

10. That this action is brought for the benefit of the plaintiff, who is the widow of the intestate, and for the infant son of the intestate, to-wit: John Laurens Dantzler.

Wherefore the Plaintiff demands judgment against the Defendants for one hundred thousand dollars with costs.

Wolfe & Berry, Julian S. Wolfe, Attorneys for the Plaintiff.

In Court of Common Pleas of Barnwell County

Answer

The defendant above named, by their attorneys, make answer to the complaint herein as follows:

For a First Defense

Deny each and every allegation in the said complaint contained, except those matters hereinafter specifically admitted.

For a Second Defense

1. As to paragraph one of said complaint, the defendants have not sufficient information upon which to form a belief,

and therefore deny the same and demand strict proof thereof.

2. The defendants admit paragraphs two, three, and four of said complaint, and so much of paragraph five as alleges that the defendants at the time were engaged as common carrier railroads, but deny that they were engaged in intrastate commerce, but on the contrary aver in regard to said fifth paragraph of the complaint that the plaintiff's [fol. 5] intestate and the defendants, at the time referred to in the complaint, were engaged in interstate commerce, and rights between the parties hereto are controlled by the Act of Congress passed 1908, amended April 5th, 1910, 35 Stat. at L. 69, known as the Federal Employers' Liability Act, the terms and application of which are herein especially invoked.

3. As to paragraphs six and seven of said complaint, these defendants admit that plaintiff's intestate, Lawrence Keitt Dantzler, was employed by them as a locomotive engineer, and allege further that, while acting as such and engaged in interstate commerce with the defendants, he was killed in a head-on collision at or near Orangeburg, South Carolina, on the 3rd day of January, 1924.

For a Third Defense

These defendants aver that the injuries which caused the death of plaintiff's intestate on the occasion referred to in the complaint, were caused in whole or in part, or were contributed to as a proximate cause thereof, by the negligence and wilfulness of plaintiff's intestate in violating the orders of the defendants, when he knew or should have known at the time that his train was to remain on the sidetrack in the city of Orangeburg, South Carolina, in order for an eastbound train to pass; in disregarding said order and proceeding on the main line of the defendants through and past the city of Orangeburg and running into said eastbound train, causing a head-on collision, and in otherwise failing to exercise that care, caution and prudence which an ordinarily careful, cautious and prudent person would have exercised under similar circumstances, without which negligent, careless and wilful conduct on the part of plaintiff's intestate the injuries which caused his death would not have occurred

[fol. 6] For a Fourth Defense

The defendants allege that the plaintiff's intestate herein, at the time referred to in the complaint, was fully apprised and aware of all dangers, both usual and unusual, incident to his employment, and was fully aware of the physical conditions surrounding the accident and the place of employment and the method of work, and fully appreciated the dangers of the same, and freely and voluntarily acquiesced in and assumed the risks of such employment.

Wherefore the defendants pray that the complaint herein be dismissed.

Harley & Blatt, Defendants' Attorneys.

In Court of Common Pleas of Barnwell County

Stipulation as to Facts

It is stipulated by and between counsel representing all parts of this action:

1. That the intestate Lawrence Keitt Dantzler at the time of receiving the injuries from which he subsequently died was engaged in an act of interstate commerce.

2. That the intestate, Lawrence K. Dantzler, at the time of receiving the injuries from which he subsequently died and the defendants at the same time with him were engaged in acts of interstate commerce.

3. That this action is being and to be tried under the Federal Employers' Liability Act of Congress.

4. That the defendants are duly organized corporations engaged in both interstate and intrastate railroad commerce.

[fol. 7] In Court of Common Pleas of Barnwell County

Statement of Evidence

Testimony on Behalf of the Plaintiff

By agreement of counsel, the record from the Probate Court of Orangeburg County, being package number 24,

apartment number 5, was introduced in evidence showing the appointment of Mrs. Mary Elizabeth Dantzler as Administratrix of the estate of Lawrence Keitt Dantzler, deceased.

Mrs. Mary Elizabeth Dantzler, the plaintiff, a witness in her own behalf, sworn, testified as follows:

Direct examination.

By Mr. W. C. Wolfe:

My full name is Mary Elizabeth Dantzler. I was born and raised in this County. My name was Miss Bessie Wise before my marriage to Mr. Dantzler. Mr. Lawrence Keitt Dantzler, who was killed in this wreck near Stilton, was my husband. That wreck happened January 3, 1924. He was employed at the time of his death by the Southern Railway Company as a locomotive engineer. He had been working for them about eighteen or twenty years, and we had been married seventeen years at the time of his death. He was forty-one years old at the time of his death, and left surviving him myself as his widow and one son, John Lawrence Dantzler, who was sixteen years of age. My age at that time was forty-one, the same as my husband's. My husband was working regularly for the Southern Railway Company, and the condition of his physical health was good. During our married life he never lost any time on account of sickness.

Q. Mrs. Dantzler, what wages did he draw as locomotive engineer for the railroad?

A. You mean by the year?

[fol. 8] Q. Well, have you any memorandum with you of his income tax return?

A. Yes, sir.

Q. That is for the year of 1923?

A. Yes, sir, the year before his death.

Q. That shows that the amount paid him for the year of 1923 was $2650.22?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir, that is a copy of his return.

At the time of his death Mr. Dantzler was working at Branchville, in the switching service in the Branchville yards, but he was killed near a little place called Stilton, in Orangeburg County. I was notified of his injury about one o'clock, or the middle of the day. He was taken after his injury to the Hospital in Orangeburg. After I was notified I took steps to go there, and left on the 1:45 Coast Line train and arrived in Orangeburg nearly five o'clock. I went immediately to the Hospital, but did not get to see Mr. Dantzler before he died. I was told about 6:40 that he was dead. I was at the Hospital when he died. He died from injuries received in the collision. I know the undertaker, Mr. Dukes, who prepared the body for burial. I carried the body to his old home, Hodges, South Carolina, for burial.

(No cross-examination.)

W. HAMPTON DUKES, a witness on behalf of the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I reside in Orangeburg, where I am engaged in the undertaking business, and have been in that business thirty-two years. I knew C. O. Youngblood and L. K. Dantzler. I last saw them at my undertaking shop in Orangeburg when I shipped them off. I got the two bodies from the Orange- [fol. 9] burg Hospital on the 3rd day of January, 1924, and prepared them for burial. They were both white men and about middle age. Their bodies were well nourished, especially Mr. Youngblood. He was robust and of a very fine physique. They were killed in a railroad wreck near Stilton, about two and one-half miles from Orangeburg. I saw the wreck, and I knew that Mr. Dantzler and Mr. Youngblood were working for the railroad. Mr. Dantzler was an engineer and Mr. Youngblood was a conductor. There was a very heavy fog on the morning of the wreck. I cannot recall that I ever observed it as foggy as that before in the day time. I got Mr. Youngblood's body from the

hospital about four o'clock in the afternoon, and Mr. Dantzler's body about eight that night. I did the embalming myself, and sent Mr. Youngblood's body in the hearse to Branchville, and sent Mr. Dantzler's body to Ninety Six. The wreck occurred about eight or nine o'clock in the morning.

Cross-examination.

By Mr. Harley:

I got the bodies from the Hospital at the request of Mr. Cooper, the agent of the Southern Railroad. I furnished whatever caskets the families selected. Mr. Cooper told me to do that, and the railroad paid for it.

O. B. ROSENGER, a witness on behalf of the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I am a photographer at Orangeburg, where I have resided for thirty-eight years. I recall going to a wreck on the Southern Railway near Stilton in Orangeburg County on January 3, 1924. Stilton is about two and a half or three miles from Orangeburg. I took some pictures of that wreck. These are the views that I made. Those are double [fol. 10] views. I made only two views. Two of the pictures represent each view.

(Two pictures offered in evidence on behalf of plaintiff and marked by the stenographer as Exhibits numbers 2 and 3.)

Those pictures were made right after the wreck occurred and before it was cleared away. These four views mounted on a card-board represent the passenger depot of the Southern Railway Company at Orangeburg. These pictures show the passenger depot and the sheds surrounding it, the semaphore board, and the walks around there.

(Card board pictures offered in evidence on behalf of plaintiff, and marked by the stenographer as Exhibit No. 5.)

(Picture of Lawrence K. Dantzler, the deceased, offered in evidence by the plaintiff, and marked by the stenographer as Exhibit No. 4.)

(No cross-examination.)

H. A. PEARCE, a witness on behalf of the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I am thirty years of age, and reside at Charleston. My business is train dispatcher for the Southern Railway. On January 3, 1924, I was employed at Charleston. I went on duty at twelve o'clock midnight for an eight hour period. I was relieved about 7:55 A. M. by R. L. Rogers, who is also one of the dispatchers. We both perform our duties at Charleston, South Carolina, in the service of the Southern Railway. Our office, where the records are kept, is at the corner of King and Anne Streets in Charleston. Mr. Rogers relieved me at 7:55 on the morning in question.

Q. I hand you the dispatcher's book, Mr. Pearce,—will [fol. 11] you read the order in that book?

A. Yes, sir.

Q. What does it say?

A. Order number 18, J. D.,—Extra 723 East, and operator, at 8:01 A. M., and B. V., which is Branchville, or abbreviation for Branchville, at 8:01 A. M.—Extra 723 east gets this order and meet extra 483 west at Orangeburg. Engine 483 run extra from Branchville to Andrews.

(Original order offered in evidence on behalf of the plaintiff, and marked by the stenographer as Exhibit No. 6.)

I did not send the order in question, the one you have just put in evidence. Mr. Rogers sent it directly after he relieved me. I was present when he sent it. Train number 483 east was an extra train at Branchville. On that train Mr. Youngblood was the conductor and Mr. Dantzler the engineer. That train number 483 consisted of the engine and tender; it had no caboose. It moved in the direction of

west. The took it by Orangeburg, and it was going to Andrews by Fort Motte. It was to relieve an engine at Fort Motte and take it on in to Andrews Yard near Columbia. Mr. Dantzler and Mr. Youngblood composed the train crew as engineer and conductor, respectively of the switch service at Branchville. They would go on duty at nine P. M. at night and stay on duty until five A. M. the next morning. There was another freight train,—the one that had the disabled engine,—moving in the same direction and going to Andrews, South Carolina. I stayed on duty until eight o'clock that morning, when Mr. Rogers relieved me. While I was on duty I was notified that the locomotive engine of this freight train which had reached Fort Motte had become disabled and could not go any further, and I proceeded to make arrangements to relieve them. The most available [fol. 12] crew was at Branchville. Mr. Youngblood and Mr. Dantzler were the most available men we had, and that is the reason I called them. They went to work at nine o'clock at night and worked until five the next morning when they were to go off duty, provided the work had been completed. If not, they would keep on until it was. They were located at Branchville in switch service. I was notified about 7:30 that morning that the freight train at Fort Motte had become disabled. That disabled train was headed to Andrews yard near Columbia. The number of the disabled train at Fort Motte was extra train number 683. It was an extra train also. It was my duty to make arrangements to relieve that disabled train, and I set that plan in motion by having Mr. Youngblood and Mr. Dantzler called out. I sent a message through the operator to call them out, and before I got them out Mr. Rogers succeeded me as the dispatcher. Mr. Rogers came on duty before they got out, but they had been called out. In the dispatcher's office at Charleston there are three dispatchers, and each one works eight hours. I was one of the three that served there. I went on duty at twelve o'clock midnight and worked eight hours until eight A. M. Then Mr. Rogers came on at eight o'clock and worked until four in the afternoon, and another man would come on duty then and work until mid-night. Branchville is a junction point and an all-night office. The dispatchers that direct the movement of the trains are in the office at Charleston. The movement of the trains on that line is directed from Charleston. The operators are at various

stations. They have three operators at Branchville. That office stays open day and night. The next office going towards Columbia that stays open twenty-four hours in the day is Orangeburg. Then the next office would be Kingville, [fol. 13] and the next one would be Andrews yard located right at Columbia. Fort Motte is just a day office. When I turned the office over to Mr. Rogers, I had just sent for these men and made arrangements for them to go. They were to go and relieve extra 683. I then turned it over to Mr. Rogers and he was to complete it. He succeeded me and took hold where I left off.

Q. Mr. Rogers sent this off (indicating the message)?
A. Yes, sir.
Q. To two offices?
A. Yes, sir, Branchville and Orangeburg.
Q. Mr. Von Lehe is the operator at Branchville?
A. On duty then, yes, sir.
Q. And at Orangeburg Mr. T. E. Jones was on duty?
A. Yes, sir.
Q. This train order that you have just read, and we have put in evidence, to Mr. Von Lehe, the operator at Branchville, and to Mr. Jones, the operator at Orangeburg, that was sent by Mr. Rogers?
A. Yes, sir.
Q. You stayed there a little bit after you quit work?
A. Yes, sir.
Q. You heard Mr. Rogers send the order?
A. Yes, sir.
Q. You heard the operator at Orangeburg repeat it back to him, didn't you?
A. No, sir, I had gone out then.
Q. When Mr. Rogers sent the order,—did it have the words "and operator" in it?
A. Yes, sir, it was sent out that way.
Q. It was recorded that way in the book?
A. Yes, sir.
Q. The words "and operator" are in there?
A. Yes, sir.

The train that was disabled at Fort Motte was not a regu- [fol. 14] lar freight, but an extra train known as number 683. When we made up number 483 to go and relieve that train, it became an extra also and was extra number 483.

There was also another extra train on the road this side of Fort Motte coming east. Extra 683, which became disabled at Fort Motte, and this other extra train coming east met at Fort Motte. At that time, after number 483 was created, we had three extra trains out on the line and all between Kingville and Branchville. Extra train number 683 was headed towards Andrews yards and Columbia and was going west. Then extra 723 was a freight moving from Andrews yard eastward to Charleston. And when the 683 became disabled at Fort Motte, we made up extra train number 483 to go west and relieve extra 683.

Q. Then in the order, extra 483 get this order and met extra 723 at Orangeburg,—that was a middle order or what is known as a meet order?

A. That was a meet order along with his running order.

Q. That was both?

A. Yes, sir.

Q. You call them middle orders sometimes at Orangeburg?

A. Yes, sir.

Q. The one that the Orangeburg operator got is known as a middle order?

A. Yes, sir.

Q. And extra trains run exclusively by train orders?

A. Yes, sir.

Q. And, of course, it has no schedule?

A. No, sir.

Q. You make up an extra train as a general rule to meet emergencies, I believe?

A. Yes, sir, when we need them.

Q. And it is operated by train orders?

A. Yes, sir.

Q. In the matter of train orders,—there are two kinds of train orders?

A. Yes, sir, two forms.

[fol. 15] Q. What are they?

A. One is a thirty-one (31) and one is a nineteen (19).

Q. Train order thirty-one and train order nineteen?

A. Yes, sir, train order form 31, and train order form 19 is the correct form.

Q. There is this difference,—the train order form thirty-one has to be signed for?

A. Yes, sir, by the conductor.

Q. And train order nineteen is called a hoop order?

A. Yes, sir, when it is delivered by the operator.

Q. When the train comes along, and the operator has a nineteen (19) order,—he has it on a hoop or on a stick?

A. Yes, sir.

Q. And one of the trainmen get it without stopping?

A. Yes, sir.

Q. That does not have to be signed for?

A. No, sir.

Q. When you go to send a thirty-one (31), you tell the operator or operators how many copies to make?

A. Yes, sir, we say copy three, or copy five, or copy seven as the case may be.

Q. Depending on the number of trains affected?

A. Yes, sir.

Q. When the dispatcher tells the operator to do that,—then he must make the required number of copies?

A. Yes, sir.

Q. Just according to the trains affected?

A. According to the number affected, yes, sir.

Q. Now, you use code words in order to abbreviate?

A. Yes, sir, we have code calls for different stations.

Q. You do that to save time?

A. Yes, sir.

Q. For instance, Orangeburg,—instead of sending the whole word there, you have a code word, which is J. D.?

A. That is in a call.

[fol. 16] Q. When you go to call the Orangeburg operator?

A. Yes, sir.

Q. And B. V. is the call for Branchville?

A. Yes, sir.

Q. Whenever the words "and operator" is in a message,—when it is addressed to the train or trains "and operator",—a form thirty-one (31),—it must be made a five copy order?

A. Yes, sir.

Q. That is a five copy order?

A. Yes, sir, to Orangeburg.

Q. The one in this instance?

A. Yes, sir.

Q. That is so because it has the words "and operator"?

A. Yes, sir.

Q. If it did not have the words "and operator" there it would only be a three copy order?

A. Yes, sir, only three copies.

Q. Now, when Mr. Rogers, the dispatcher, sent that message there containing those words "and operator",—you say he did send it with the words "and operator" in it?

A. Yes, sir.

Q. Then it became the duty of the operator at Orangeburg to make five copies?

A. Yes, sir.

Q. And of the five copies that the operator at Orangeburg would make, he would keep one copy for his office file or records?

A. Yes, sir.

Q. And the first train that would arrive that was affected, then two copies of that order should be given to the conductor, who would sign for it, and he would give the engineer one,—isn't that the case?

A. Yes, sir, train 723 would have to sign for it, but train 483 would not have to sign for it as he had already signed for the same order.

Q. To have done that properly he ought to have five copies of the order?

A. Yes, sir.

[fol. 17] Q. And he ought to have two copies for train 483?

A. Yes, sir.

Q. Mr. Dantzler was the engineer of train 483?

A. Yes, sir.

Q. And when he arrived there, then there ought to have been two copies for Mr. Dantzler and Mr. Youngblood?

A. Yes, sir.

Q. They come up and blow the signal,—the signal when you arrive is four short blasts of the whistle?

A. Yes, sir.

Q. They ought to have been given by the operator at Orangeburg two copies of that order?

A. Yes, sir.

Q. That is order number eighteen here?

A. Yes, sir.

Q. That means that is the serial number?

A. Yes, sir.

Q. They are numbered consecutively?

A. Yes, sir.

Q. At midnight you begin to number the orders serially?

A. Yes, sir.

Q. The first order after midnight is number one?

A. Yes, sir.

Q. Then number eighteen means that when Mr. Rogers succeeded you, that you had used seventeen orders previous to that time?

A. No, sir, I think sixteen, because I did not use number thirteen.

Q. This was properly number eighteen?

A. Yes, sir.

Q. That was the proper number for Mr. Rogers to use?

A. Yes, sir.

Q. Now, Mr. Pearce, when a train approaches a station, the semaphore board ought to stand out in horizontal form just like it is shown on the picture on the card board in the upper right hand corner as shown?

[fol. 18] A. Yes, sir, when an operator is on duty.

Q. And there is supposed to be an operator on duty at Orangeburg all of the time?

A. Yes, sir, twenty-four hours.

Q. Then when it is dropped to clear, after getting the signals from the engineer—the semaphore board is dropped to the position shown on the lower right hand corner of the cardboard?

A. Yes, sir, provided no orders are there at the station.

Q. When he drops it to clear they come down?

A. Yes, sir.

Q. The bottom picture at page 46 of the rule book shows the semaphore board dropped, does it not?

A. Yes, sir, that is correct.

Q. Another thing we might explain to the jury—on that semaphore—there are two boards out that way like my hand (indicating to the witness)?

A. Yes, sir.

Q. That is a normal position?

A. Yes, sir.

Q. You don't drop both of the boards?

A. No, sir.

Q. One controls a train coming from each direction?

A. Yes, sir.

Q. In coming from Charleston, the right hand arm would show red towards Charleston?

A. Yes, sir.

Q. And the left arm, the red would be shown the other way?

A. Yes, sir.

Q. When a train approaches coming east—that is, from towards Charleston, that board is standing out red?

A. Yes, sir.

Q. When the engineer blows four short blasts of his whistle, and the operator on duty drops the board, then the engineer acknowledges that with two short blasts?

A. Yes, sir.

Q. That is the signal in reply to the operator?

A. Yes, sir, that is right.

[fol. 19] Q. What do the words "and operator" in a train order mean, Mr. Pearce?

A. It means that it is addressed to the operator as well as the train affected.

Q. I believe that you have explained that the words in the address "and operator," means that there must be five copies made of the order?

A. Yes, sir.

Q. And if it is a middle order, including the words "and operator" in the address, that middle order changes it into a five copy order?

A. Yes, sir, or more.

Q. According to the number of trains affected?

A. Yes, sir.

Q. Now, if the order had been addressed to 723 East and operator,—if the extra 483 had gotten to Orangeburg first, would he or not have gotten a copy of that order?

A. Yes, sir, he should have.

Q. In that case it should have been a five copy order?

A. Yes, sir.

Cross-examination.

By Mr. Harley:

I have been working for the railroad on the Charleston division about fifteen years in all, and for ten years I have been a dispatcher located in Charleston. The Charleston division comprises the road from Charleston to Columbia,

and also from Charleston to Augusta by way of Branchville. Regular trains are operated by time tables, schedules and train orders, and extra trains are operated exclusively by train orders. The two trains involved in this case were both extra trains, and they were run by written train orders. There is positively no such thing as a verbal train order. A thirty-one order is an order that the conductor signs for when it is delivered to him by the operator. Two copies are given to the conductor after his signature is completed to the train dispatcher and the order is made complete. The [fol. 20] conductor keeps one copy, and gives one to the engineer and takes his signature for it.

Q. That is the order that Mr. Dantzler had at the time?

A. Yes, sir.

Q. That was the only order put out by you affecting that train number 483?

A. By Mr. Rogers.

Q. You were there to hear it put out?

A. Yes, sir.

Q. That order reads as follows: Order number 18, J. D., Extra 723, East and operator, and B. V.,—Extra 723 east gets this order and meet extra 483 west at Orangeburg. Engine 483 run extra from Branchville to Andrews?

A. Yes, sir.

Q. It was known as order number eighteen?

A. Yes, sir.

Q. That was put out by Mr. Rogers?

A. Yes, sir.

Q. This order that was sent,—it was sent also to B. V., and that is Branchville?

A. Yes, sir.

Q. And J. D. is Orangeburg?

A. Yes, sir.

Q. It went out simultaneously?

A. Yes, sir.

Q. And it was taken down at Branchville and Orangeburg at the same time?

A. Yes, sir.

Q. By the operator at each place?

A. Yes, sir.

Q. When this order originated in the dispatcher's office, it was addressed in this book to extra 723 east, and to J. D., which is Orangeburg, and operator?

A. Yes, sir.

Q. That order which you see there, and which was delivered to Branchville to the operator, and then to Conductor Youngblood, and to Engineer Dantzler,—there is nothing on that order to show that the words "and operator" should have been on there?

A. Absolutely nothing.

Q. And that order reads "extra 723 east gets this order and meet extra 483 west at Orangeburg. Engine 483 run [fol. 21] extra from Branchville to Andrews"?

A. Yes, sir.

Q. There was nothing on the order that Conductor Youngblood and Engineer Dantzler had, and which had been delivered to them at Branchville, that would indicate that they were to receive another order at Orangeburg?

A. No, sir.

Q. Or anywhere else?

A. No, sir, nothing at all.

Q. That order said what?

A. To meet extra 723.

Q. Where?

A. At Orangeburg.

Q. Now, that semaphore board is generally known as what?

A. A train order board.

Q. When a train order board is,—when the hand or arm is extended showing red, it means stop?

A. Yes, sir.

Q. And not pass it?

A. Absolutely.

Q. When that train order board goes down he had shown it clear.—what does that mean?

A. It indicates that there are no orders at that station for that train.

Q. Now, with that order in the possession of engineer Dantzler, which upon its face shows that he was to meet this extra train 723 going east at Orangeburg,—when that train approached Orangeburg, and that semaphore showed red, and he stopped and asked for signals, and it was dropped and showed clear,—what does that mean?

A. That there was no orders for him at Orangeburg.

Q. And he was to do what?

A. And that they may proceed on the orders he had, which was to go into the side track and meet extra train number 723 at Orangeburg. It meant to go into the east end of the pass track at Orangeburg.

Mr. Wolfe: That train order does not say that.

[fol.22] Witness: I said that is what it meant. I didn't say that the order itself said that.

Mr. Harley (continuing):

Q. That train order which plainly showed upon its face, and read extra 723 east gets this order and meet extra 483 west at Orangeburg, etc.,—there was nothing on that order when they got it at Branchville to indicate that they were to receive further orders at Orangeburg?

A. Nothing whatever.

Q. When that train approached Orangeburg, and gave the signal and that semaphore board dropped,—it meant what?

A. To proceed.

Q. To proceed where?

A. To go in the pass track and meet extra 723 east at Orangeburg and then proceed to Andrews.

Q. After it had met extra 723 east?

A. Yes, sir.

Q. Now, Mr. Pearce, had that order been annulled?

A. No, sir.

Q. Or superseded?

A. It had not.

Q. Or fulfilled?

A. No, sir.

Q. Then that order was in effect when that train went into Orangeburg that morning?

A. Yes, sir.

Q. And it was his duty to do what?

A. To meet extra 723 east at Orangeburg.

Q. How?

A. By taking the siding and waiting until extra 723 east arrived there.

Q. And then proceed?

A. Yes, sir, under the order which he had.

Q. Which one of these trains was superior?
A. The eastbound train.
Q. That would be extra 723?
A. Extra 723 east, yes, sir.
Q. It was going towards Charleston?
A. Yes.

[fol. 23] Q. Why do you say it was a superior train, Mr. Pearce?

A. Because it was traveling in the superior time table direction, and it was thereby the superior train.

Q. This train extra 483, being an inferior class train under the rules of the Company, when it approached Orangeburg,—where should it have gone?

A. With a meet order with another train of the same class?

Q. Yes.
A. In the side track.
Q. Orangeburg has a yard limit?
A. Yes, sir.
Q. What is that?

A. Inferior trains must go in the side track and leave the main line open.

Q. Is that in the rule book?
A. Yes, sir.
Q. What is the number?
A. It is rule 93.
Q. Read that rule to the jury?

A. It says "within yard limits the main track may be used without protecting against second and inferior class trains. Second and inferior class and extra trains or engines must move within yard limits prepared to stop unless the main track is seen or known to be clear. When the view is obstructed additional precautions must be taken. In case of accident the responsibility will rest with the approaching train."

Q. What is rule number 88?

A. It says "At meeting points between trains of the same class, the inferior train must clear the main track before the leaving time of the superior train. At meeting points between extra trains, the train in the inferior time table direction must take the siding unless otherwise provided. Trains must pull into the siding when practicable;

if necessary to back in, the train must first be protected, as prescribed by rule 99, unless otherwise provided."

Q. So you say that this train, extra number 723 was a superior train?

A. Yes, sir.

[fol. 24] Q. Superior by direction?

A. Yes, sir, by traveling in the time table direction.

Q. Does the time table show it?

A. Yes, sir.

Q. Where?

A. In a footnote on the bottom of the page.

Mr. Harley: Now, if the Court please, we offer this time table in evidence.

Mr. Harley (continuing):

Q. Mr. Pearce, refer to page 48, form A, of the rule book with reference to orders,—which I understand includes orders to extra trains?

A. Yes, sir, I have it.

Q. That says for the trains to meet in the manner as prescribed in the rules?

A. Yes, sir.

Q. Now, read rule No. 105 of the rule book to the jury?

A. That says "both the conductor and the engineman are responsible for the safety of the train and the observance of the rules, and, under conditions not provided for by the rules, must take every precaution for protection. When two or more engines are attached to a train each engineman must have a copy of the train orders and each will be responsible for the observance of the rules."

Q. Now read for us rule number 1293 on page 147 of the rule book?

A. That rule 1293 says "They are jointly responsible with the conductor for the safe movement of the train and must decline to obey instructions which involve violation of the rules, or peril to persons or property. They are solely responsible for the observance of and compliance with the indications given by fixed signals, flagmen's signals or other signals affecting head and forward train movements; the responsibility of the conductor in such cases is to secure compliance to the extent of his ability with the [fol. 25] indications of the signals after they come into his

view and according to the prescribed method of operation of fixed signals."

Q. When it says "they,"—who does that refer to?

A. To the engineers.

Q. Now, Mr. Pearce, read rule 1137?

A. That rule refers to the conductors, and it says "they must recognize the joint responsibility of enginemen for the observance of the rules and must consult with them in regard to the safe movement of the train."

Q. In other words, Mr. Pearce, rule 1293 means that the engineers are jointly responsible with the conductors?

A. Yes, sir.

Q. And rule 1137, which you have just read to the jury, is directed to the conductors?

A. Yes, sir.

Q. Then, they are jointly responsible for the movement of the train?

A. Yes, sir.

Q. Both the engineer and the conductor are jointly responsible?

A. They are, yes, sir.

Q. Now read rule number 220?

A. That says "train orders once in effect continue so until fulfilled, superseded or annulled. Any part of an order specifying a particular movement may be either superseded or annulled. Orders held by or issued for or any part of an order relating to a regular train become void when such train loses both right and schedule as prescribed by rules 4 and 82, or is annulled. When a conductor or engineman, or both, is relieved before the completion of a trip, all train orders and instructions held must be delivered to the relieving conductor or engineman. Such orders or instructions must be compared by the conductor and engineman before proceeding."

Q. Now, Mr. Pearce, a train order, under the rules, once in effect remains in effect until it is fulfilled, superseded or annulled?

A. Yes, sir.

[fol. 26] Q. This order, number eighteen, had it been annulled, superseded or fulfilled?

A. No, sir.

Q. It was still in effect?

A. It was.

Q. Would the position of the semaphore board change, or nullify or effect, or change the order which extra train number 483 had?

A. No, sir.

Q. Would the copy of the order, known as number 18, delivered to extra train 483 at Orangeburg have affected their rights to occupy the main line to a point west of the east switch of the pass track?

A. No, sir.

Q. With reference to the five copy order at Orangeburg, was there anything in the order held by the crew of extra 483 west given them at Branchville, which would indicate to them that they would receive an additional copy of the order at Orangeburg?

A. No, sir.

Q. Was it really necessary for them to receive an additional copy of order number eighteen in order to carry out the instructions of the order that they had?

A. No, sir.

Q. How many hours had the crew of extra 483 been on duty when the collision occurred?

A. Nine hours and forty minutes.

Q. If order eighteen had been sent to the operator at Orangeburg, and copies been delivered to the crew of extra 483—would such copies have been in any way different from the order that they already had?

A. No, sir, it would have been a duplicate only of the order that they already had.

Q. It would have been giving them a copy of the order that they already had in their possession?

A. Yes, sir.

Q. The rules say that an order should be plain?

A. Yes, sir.

Q. And it must be brief and clear?

A. Yes, sir.

[fol. 27] Q. So this order was brief and clear?

A. Yes, sir.

Q. And could be understood by anyone that had ever read a rule?

A. It should have. It was perfectly clear, and as brief as it could be made.

Q. Now, you also have yard limit rules, haven't you?

A. Yes, sir.

Q. What rule is that?

A. That is rule number 93.

Q. Orangeburg had a yard limit?

A. Yes, sir.

Q. And that rule applied to Orangeburg?

A. Yes, sir, under the working time table.

Q. Turn to page six, and read the rule in paragraph B?

A. "Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning they must apply to proper authority for an explanation."

Q. Now, turn to page seven of the rule book, and read under the heading "Time Table" on page seven?

A. "The authority for the movement of regular trains subject to the rules. It contains the classified schedules of trains with special instructions relating thereto."

Q. Are you familiar with the surroundings at Orangeburg?

A. Yes, sir, I believe that I am.

Q. At stations,—you have how many tracks outside of the main line?

A. There is a few commercial tracks that I don't know. I can't keep up with all of those.

Q. You mean at Orangeburg?

A. Yes. I don't know where they are exactly, or how many there are. We only have one pass track, but I can't tell about the number of commercial tracks.

Q. You also have a house track?

A. Yes, sir.

Q. At all stations you have certainly three tracks?

A. Practically all, yes.

Q. That is, a main line, a house track and a pass track?

A. Yes, sir, at practically all stations.

[fol. 28] Q. The house track is for what?

A. It is for cars that are to be loaded and unloaded.

Q. A pass track is what?

A. For trains to meet and pass.

Q. Where was the pass track in Orangeburg?

A. The entrance to this one was about seventy-five yards west of the train order signal at Orangeburg.

Q. You mean by that the semaphore?

A. Yes, sir, and passenger depot.

Q. That is on the Columbia side?

A. Yes, sir.

Q. Trains meeting at Orangeburg, or at any other station, use the pass track?

A. Yes, sir.

Q. Exclusively for that purpose?

A. That is what it is used for.

Q. In going into that pass track, state whether or not it is necessary for a train on the main line to pass the semaphore board before they can get in on the pass track?

A. Yes, sir, going towards Columbia.

Q. Now, when a train, with a meet order of that kind, to meet a train at Orangeburg, and when that train stops, and the semaphore is showing red, it means stop?

A. Yes, sir.

Q. And when that semaphore goes down it means what?

A. To proceed on the orders that you now hold.

Q. And for one to carry out the terms of that order which they held, it would have been necessary for that train to have gone by the semaphore board, and the depot where the operator was,—where Mr. Tyson was,—in order to get in either the east or west end of the pass track?

A. Yes, sir, it would have been necessary.

Redirect examination.

By Mr. Brown:

Q. Mr. Pearce, you live in Charleston you said?

A. Yes, sir.

[fol. 29] Q. You don't stay up here in Orangeburg?

A. No.

Q. You were on duty from twelve the night before until eight the next morning?

A. Approximately.

Q. You went off according to the records at two minutes of eight o'clock?

A. Yes, sir.

Q. When this order was sent?

A. Yes, sir, but I was still in the office.

Q. How soon after that was it before you got out of the office and went home and went to sleep?

A. I got out of the office at eight o'clock, but I don't know when I went to sleep.

Q. It is plain that you were not in the office a little after eight o'clock that morning?

A. I was not.

Q. The wreck occurred at twenty-five minutes after nine?
A. Thereabouts, yes.
Q. One hundred miles from you?
A. About eighty-eight miles.
Q. You were not in the office when the wreck occurred?
A. No, sir.
Q. But you have said to the jury that those orders were neither fulfilled, superseded or annulled?
A. They were not.
Q. How do you know?
A. From the records.
Q. What records, my friend?
A. The records kept in the train dispatcher's office.
Q. You were not in there?
A. No, sir.
Q. You don't know what orders were given?
A. Yes, sir, I do.
Q. How do you know?
A. By the record.
Q. Of your own knowledge, you don't know what orders were given or susperseded or fulfilled or annulled?
A. I know what train orders were given.
Q. You are still train dispatcher of the Southern Railway?
A. Yes, sir.
[fol. 30] Q. Right there in Charleston?
A. I am.
Q. And we took your testimony to get these records?
A. I guess so. I don't know.
Q. You came here as a witness for the railroad?
A. I don't know.
Q. They are paying you for your time, and your Superintendent ordered you to come?
A. Yes, sir.
Q. You have conferred with the railroad attorneys every day since you have been here?
A. No, sir, not every day.
Q. You have been in their offices?
A. Several times, yes, sir.
Q. You prepared and went over the questions which Mr. Harley asked you,—these questions that have been asked you by him, and you answered them so positively?
A. No, sir, I did not.

Q. Did you see them?
A. No, sir.
Q. Who prepared them?
A. I guess he did.
Q. Don't you know that he prepared them and went over them with you?
A. No, sir.
Q. Who prepared those rule book memorandums,—don't you know that Mr. Harley doesn't know that rule book that well,—don't you know that you prepared them and went over every question with him?
A. No, sir.
Q. Haven't you, Mr. Pearce, discussed those things with him?
A. Some of them, but not all of them.
Q. You say that the order was neither annulled or superseded or fulfilled?
A. No, sir, that order was not.
Q. You didn't hear Rogers annul it?
A. No, sir.
Q. Therefore, you don't know it of your own knowledge?
A. It is not in the dispatcher's book.
Q. Suppose he made an order and didn't make a record of it, then what?
A. He would have been a very poor train dispatcher.
[fol. 31] Q. If he passed an order or gave an order, and didn't make a record of it, and it is not in the train dispatcher's book—you would not know anything about it?
A. I know only by the train book.
Q. If an order was given superseding that train order you would not know anything about it, if there was no record there?
A. There would have to be a record.
Q. If an order was given, Mr. Pearce, and there was no record of it—if an order was given and you were not there, and didn't hear it, and no record was made of it—then you don't know anything about it?
A. No, sir, I could not if there was no record of it.
Q. Then you don't know?
A. I know that it was not annulled or superseded or fulfilled. I know that much.
Q. Yet, you don't know anything except what is in this dispatcher's book here?

A. I have to go by the records, yes, sir.

Q. There is such a thing as doing things without a record —you know that, don't you?

A. Hardly in train dispatching.

Q. Didn't you hear Mr. Rogers say at the last trial of another case, involving the same facts as in this case, that he gave an oral order to Mr. Tyson to tell the man to go down to the west end of the pass track and go in there and wait?

A. That to my understanding was a conversation.

Q. Look and see if there is an order in that book given by Mr. Rogers to the Orangeburg operator for train number 483 to go to the west end of the passing track and go in?

A. No, sir.

Q. You don't see such an order?

A. Not in here, no.

Q. You say that these orders have to be plain and clear and unambiguous?

A. They have to be plain and clear.

[fol. 32] Q. That is what the rule book says about it?

A. Brief and clear, yes.

Q. Read that order?

A. It says extra train 483 going east——

Q. That means from Charleston to Columbia?

A. Yes, sir, that is the way it was going.

Q. Where does it say that train 483 was going?

A. From Branchville to Andrews.

Q. And number 723 was going where?

A. From Columbia towards Branchville.

Q. It was going east?

A. Extra 723 was.

Q. The order says what?

A. It says 723 east gets this order and meet extra 483 west at Orangeburg.

Q. That is the order we have in this case?

A. That is part of it.

Q. You saw the order that was taken off of Captain Youngblood's dead body?

A. No, sir, I did not.

Q. Read that and see if it is ambiguous?

A. It says extra 723 gets this order and meet extra 483 east at Orangeburg. Engine 483 run extra from Branchville to Andrews.

Q. And it was taken off of Mr. Youngblood's dead body?
A. I understand so, yes.
Q. Which direction does your train book say that extra 483 is running in?
A. Running west.
Q. And 483 is the train that the men were killed on?
A. Yes, sir.
Q. 483 west is in your train book?
A. Yes, sir.
Q. And 483 east is in the order?
A. Yes, sir, in that order there.

Mr. Brown: I offer that train order taken from Mr. Youngblood's body in evidence.

Mr. Brown (continuing):

[fol. 33] Q. Now, a train order, number thirty-one, five copy, as directed to operators, as you testified on your original examination, means that two copies each of the order should be given to each one of the two trains as they come to the meeting point?
A. Yes, sir.
Q. Which was Orangeburg, in this case?
A. That is correct.
Q. Now, 483, the fatal train, was going west towards Columbia or Andrews Yord?
A. Yes, sir.
Q. It was entitled under the rules when it got to Orangeburg to receive two additional copies of the order?
A. If it was practicable to give it to them, yes.
Q. I thought you run railroads by rules?
A. We do.
Q. Don't the rules require that the highest precaution be taken to preserve human life?
A. Yes, sir, they do.
Q. Youngblood and Dantzler, no matter if they had one thousand copies of that ambiguous order, were entitled under the rules to receive according to the testimony of the witnesses that were here last week—they were entitled to receive two copies of the order at Orangeburg as a reminder and an extra precaution of danger?
A. Yes, sir.

Q. And if they went into a side track there they were entitled to receive a clearance card?

A. The train order signal does not govern trains in the pass track, Mr. Brown.

Q. If they went into the side track—if according to the testimony of Mr. Bellinger and yourself, and Mr. Rogers—that these men in addition to receiving the two copies—that is, the two extra copies of the precautionary order at Orangeburg—were entitled to receive a clearance card like form 603?

A. If they received a copy of the order they were entitled [fol. 34] to a clearance card.

Q. But if you were not going to give them a copy of the order, then they would not get this?

A. By not giving them that would only signify that there were no orders at that station.

Q. If they got two copies of the order as the rules require, they would be entitled to a clearance card as shown on form 603?

A. Yes, sir, they would have received a copy of the order and clearance card.

Q. You have testified about the records?

A. Yes, sir.

Q. You go by the records?

A. Yes, sir.

Q. And you stick to the rule book?

A. Yes, sir, I try to.

Q. Did Dantzler and Youngblood get two copies of that order and a clearance card at Orangeburg?

A. No, sir, they did not.

Q. When you got to Orangeburg, if the proper signal was on, the red arm would be on the cross bars this way (indicating to the witness)?

A. Yes, sir.

Q. That is normal position?

A. Yes, sir, where you have an operator.

Q. A train cannot pass with that on?

A. No, sir, not without a clearance card or to do station work or go in the pass track.

Q. Extra 483 was not to do any station work?

A. No, sir.

Q. When train 483 reached there, and blew to know if they had any more orders for them—that red thing was on there to stop them?

A. Yes, sir.

Q. And they could not have moved until yet if they had kept that red board on them?

A. Except to go in the pass track.

Q. They could not pass that to go in the side track if the [fol. 35] red board was on except with a clearance card?

A. No, sir.

Q. Don't all of you say that?

A. No, sir I was wrong. If they said that it is wrong. If I said that I did it unconsciously because I know the rules and it is wrong.

Q. You were conscious of it?

A. No, I didn't say that, Mr. Brown.

Q. You know your rules then?

A. Yes, I try to.

Q. When that train got there, what was the duty of Engineer Dantzler when he saw this red board?

A. To give four blasts of the whistle.

Q. When that red thing was on him there?

A. Yes, sir.

Q. Then if he had any orders for him it was his duty to give them to him?

A. Yes, of course.

Q. Tyson was the operator?

A. Yes, sir.

Q. Tyson had two copies of this order and a clearance card?

A. The records at Charleston show that if was put out that way, but I don't think his records show that.

Q. If he had the order as it was put out it was his duty to give them two copies of the order and the clearance card,—if he performed his duty Engineer Dantzler was entitled to two copies of that order and a clearance card before that board fell down and showed clear?

A. Yes, sir, if he had the orders as put out he was entitled to it.

Q. This red board down means to proceed?

A. Yes, sir.

Q. And that other is a clear signal?

A. Yes, sir.

Mr. Brown: I offer in evidence the signal shown at page 46 of the rule book.

Mr. Brown (continuing):

[fol. 36] Q. That is a copy of the order that Mr. Dantzler had?

A. Yes, sir.

Q. With a clearance card attached to it?

A. Yes, sir.

Q. And it was issued by Mr. Von Lehe at Branchville?

A. Yes, sir.

Q. And if Tyson, and Jones who took the order ahead of Tyson, had performed their full duty according to the records here,—when Mr. Dantzler blew for instructions Tyson would have come out with two copies of the order and a clearance card?

A. Yes, sir, if he had performed his duty.

Q. If he had performed his duty, and those men had gone in there, there would have been no wreck?

A. No, sir, not between those two trains that day.

Q. If they went in the pass track on the understanding which Tyson should have given them, and the clearance card, there would have been no wreck?

A. No, sir, and if they had stayed there until 723 came there would have been no wreck.

Q. Well, you say that the order here had not been fulfilled?

A. No, sir, it had not been.

Q. If it had been fulfilled, and if Dantzler had been led to believe by the conduct of Tyson in dropping this board, and by the conduct of the man beckoning him ahead there at the crossing, which we will hear about later, and by another train standing in the side track down there, and popping off steam,—it is possible that that order had been fulfilled?

A. No, sir.

Q. That wasn't possible?

A. No, sir.

Q. If number 723 was in the track, the first part of the meet order had been fulfilled?

A. It was not supposed to go in the track.

Q. That is what you say?

A. That is correct, too.

[fol. 37] Q. I don't care anything about who was to go in the pass track or side track,—if extra 723 was in the track, then there was no necessity for extra 483 to go in there?

A. No, sir, if number 723 was in there with all of his train, including the caboose, and proper marks, it was not necessary for him to go in the track.

Q. It wouldn't have been necessary for both of them to go in there?

A. No, sir.

Q. You want to tell the jury now that number 723 was a superior train because it was running towards the Atlantic Ocean?

A. Yes, sir, it was according to the rules, because it was an east bound train.

Q. Going towards Charleston?

A. Yes, sir.

Q. That made it superior you say?

A. Yes, sir, it was an east bound train.

Q. Pick up the rules and show me where it says that?

A. I showed you last week.

Q. Show me where an extra train running one way or the other has any superiority over another extra train,—I want you to point that out?

A. The time table says that all regular trains from Columbia to West End are,——

Q. Was that a regular train?

A. No, sir, an extra train.

Q. We are talking about extra trains in this case?

A. Yes, sir, but the time table governs.

Q. It is not governed by the time table?

A. It surely is.

Q. Read on the time table where it says that?

A. I will have to read the footnote on the bottom of the time table.

Q. Read it then.

A. All regular trains moving from Columbia to West End, etc. (Witness reads the footnote referred to from the time table.)

Q. Now read the rule.

[fol. 38] A. That is rule number 88. It says "At meeting points between trains of the same class, the inferior train

must clear the main track before the leaving time of the superior train. At meeting points between extra trains, the train in the inferior time table direction must take the siding unless otherwise provided. Trains must pull into the siding when practicable; if necessary to back in, the train must first be protected as prescribed by rule number 99, unless otherwise provided."

Q. That is the same rule you have read here before?

A. Yes, sir, rule 88.

Q. Now, was it otherwise provided?

A. No, sir.

Q. Was it provided in there at all?

A. No, sir, it is covered by the rule book.

Q. What is rule 220?

A. "Train orders once in effect continue so until fulfilled, superseded or annulled. Any part of an order specifying a particular movement may be either superseded or annulled. Orders held by or issued for or any part of an order relating to a regular train become void when such train loses both right and schedule as prescribed by rules 4 and 82, or is annulled. When a conductor or engineman, or both, is relieved before the completion of a trip, all train orders and instructions held must be delivered to the relieving conductor or engineman. Such orders or instructions must be compared by the conductor and engineman before proceeding.

Q. No doubt about that rule?

A. Not a question about it.

Q. Then what is rule 93?

A. "Within yard limits the main track may be used without protecting against second and inferior class trains. Second and inferior class and extra trains or engines must move within yard limits prepared to stop unless the main [fol. 39] track is seen or known to be clear. When the view is obstructed additional precautions must be taken. In case of accident the responsibility will rest with the approaching train."

Q. What has that got to do with this case?

A. You asked me to read it.

Mr. Brown: Before the Court takes a recess I want to offer this copy of the order and clearance card in evidence as found on Mr. Dantzler.

(The order and the clearance card offered in evidence by the plaintiff and marked by the stenographer as Exhibit number 8,—Dantzler case.)

Redirect examination.

By Mr. Wolfe:

Q. When we took a recess, Mr. Pearce, yesterday afternoon, you were being examined with reference to train orders, signals, etc.,—I understand that Mr. Youngblood, the conductor, and Mr. Dantzler, the engineer, received this train order at Branchville?

A. Yes, sir.

Q. This is admitted to be the copy I believe that was given to Mr. Dantzler at Branchville?

A. Yes, sir.

Q. This is known and marked as Exhibit number 8, in the Dantzler case?

A. It is marked that.

Q. On the bottom of this sheet of paper is the clearance card given to them at Branchville?

A. Yes, sir.

Q. This order being mutilated has been pasted on the back of a piece of paper?

A. Yes, sir.

Q. You recognize that order?

A. That is the order, I think.

Q. And so is the clearance card pasted on the paper too?

A. Yes, sir.

Q. But it was not put on there at the time of delivery?

A. No, sir.

Q. Mr. Von Lehe was the operator on duty at Branch-
[fol. 40] ville you have testified?

A. Yes, sir.

Q. He issued this clearance card?

A. Yes, sir.

Mr. Wolfe: I now formally offer the clearance card pasted on Exhibit number eight.

The Court: Yes, sir.

Mr. Wolfe (continuing):

Q. That is issued by Mr. Von Lehe, the operator?

A. Yes, sir.

Q. And it is addressed to the conductor and engineer of extra train 483?

A. Yes, sir.

Q. It reads block is O. K.,—that means that the block from Branchville to Orangeburg is open?

A. Yes, sir, that means that the semaphore signal at that place is clear.

Q. It means that the block is clear from Branchville to Orangeburg, doesn't it?

A. We don't operate trains by blocks.

Q. You use the term on the Charleston division?

A. Yes, sir.

Q. You use the term "block" on your division?

A. Yes, sir.

Q. It is on the clearance card?

A. Yes, sir.

Q. And you use it then?

A. Yes, sir.

Q. Did he use it in this case?

A. Yes, sir, but it could not refer to the block from Branchville to Orangeburg.

Q. What did it refer to?

A. It referred at that place to the semaphore signal.

Q. There at Branchville?

A. That is correct.

Q. That meant he could leave Branchville?

A. Yes, sir.

Q. In accordance with the order given him?

[fol. 41] A. Yes, sir.

Q. That is on form 603?

A. Yes, form 603.

Q. That is the same form that we have referred to heretofore in the rule book of your Company?

A. It is in the rule book.

Q. It is prescribed in the rule book of the Southern Railway System on page 62 of the rules?

A. Yes, sir.

Q. Mr. Von Lehe used that on that occasion?

A. Yes, sir.

Q. That says "when a proceed signal cannot be given this form must be made in triplicate and two copies de-

livered to conductor who must see that his train is correctly designated, etc?

A. Yes, sir.

Q. That is known as a clearance card?

A. Yes, sir.

Q. This clearance card in evidence was used at Branchville?

A. Yes, sir.

Q. Then when the crew of train 483 got to Orangeburg, there should have been a five copy order there?

A. Yes, sir.

Q. And they should have received two copies of it had the words "and operator" been in it?

A. Yes, sir.

Q. And it did have those words?

A. It was sent that way.

Q. When they received two copies of that order they should have been given a copy of the clearance card?

A. Yes, sir.

Q. This order is all that Mr. Youngblood had when he left Branchville?

A. Yes, sir.

Q. And the clearance card?

A. Yes, sir, that is all that he had relating to that rule, but I think he had a couple of other orders.

Q. Well. that is all he had in reference to that rule I have asked you about?

A. Yes, sir.

Q. Mr. Youngblood, the conductor, had the other order [fol. 42] that was shown to you last evening just in the same language as this one?

A. Yes, sir.

Q. That was also given him at Branchville by Mr. Von Lehe, the operator?

A. Yes, sir.

Q. Now, when Mr. Youngblood and Mr. Dantzler arrived at Orangeburg they ought to have been given two copies of the order?

A. Yes, sir.

Q. And a clearance card?

A. Yes, sir.

Q. Now, if they had been given that, they would have had more than they had at Branchville?

A. They would have had an additional copy of the same order.

Q. And a clearance card?

A. Yes, sir.

Q. But they did not get either one at Orangeburg? A. No, sir, they did not.

Q. The Branchville operator,—Mr. Von Lehe, would not belong to put the words and operator in there?

A. No, sir, it would not be put in at Branchville.

Q. That wasn't necessary?

A. No, sir, not unless he was going to meet a train there.

Q. Then, they did not know from this order whether it had the words "and operator" in it or not?

A. How do you mean?

Q. The train orders governing the crew of train number 483 at Branchville would not have the words "and operator" in them?

A. Not in that case.

Q. As far as the two orders that were given to them, they would not know whether that was a five copy order or a three copy order?

A. That order only shows a three copy.

Q. At Branchville?

A. Yes.

Q. And that is all they had?

A. Yes, sir.

Q. The two train orders given to Mr. Youngblood and Mr. Dantzler at Branchville only showed three copies?

A. Yes, sir.

[fol. 43] Q. And as a matter of fact, it was a five copy order at Orangeburg?

A. Yes, sir, at the Orangeburg office, it was.

Q. The same order went through Branchville?

A. Yes, sir.

Q. So far as they knew—the train crew now—they didn't know whether it was a three copy order or a five copy order?

A. No, sir.

Q. If they had been given two copies at Orangeburg and a clearance card—they would have had that much more?

A. It would have been a duplicate of what they had.

Q. They did not have an Orangeburg clearance card when they left?

A. No, sir.
Q. Then, they would have had that had it been given to them at Orangeburg?
A. Yes, sir.
Q. It would have had orders on it?
A. Yes, sir.
Q. It ought to have been there for them?
A. According to the way it was sent out of Charleston.
Q. And it was not there, was it?
A. No, sir, it was not given to them.

R. L. Rogers, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

My age is 40, and I reside in Charleston. My business is Chief Dispatcher at present for the Southern Railroad. At the time of this wreck I was train dispatcher. Mr. C. W. Fox, who has since died, was Chief Dspatcher then, and I have been promoted and am now the Chief Dispatcher. I have served as a dispatcher since 1908, and was serving as such on January 3, 1924, in the office of my company at the corner of Anne and King Streets in the City of Charles-[fol. 44] ton. That is the dispatcher's office.

Q. What time did you go on duty on the day in question?
A. About 7:55 A. M.
Q. On January 3rd, 1924?
A. Yes, sir.
Q. Did you succeed Mr. Pearce?
A. Yes, sir, I did.
Q. You sent order number eighteen in question?
A. Yes, sir.
Q. You sent that order after you went on duty that morning?
A. Yes, sir.
Q. How long after you went on duty?
A. A couple of minutes afterwards.
Q. There was a train disabled at Fort Motte?
A. Yes, sir.

Q. The information with reference to the disabled train was given to you through the train dispatcher?

A. No, sir, through Mr. Pearce.

Q. He was the same dispatcher that you relieved?

A. Yes, sir.

Q. You took steps immediately to relieve the disabled train?

A. Yes, sir.

Q. You sent a relief engine?

A. That is correct.

Q. That had been ordered out by Pearce already?

A. Yes, sir.

Q. That order number 18 which is in evidence—you are familiar with that?

A. I am.

Q. Because you sent that order?

A. I sent it, yes, sir.

Q. Of course, you know that train book?

A. Yes, sir.

Q. That order in there is in your own handwriting?

A. Yes, sir.

Q. And that book is in evidence already?

A. I think so, yes, sir.

[fol. 45] Q. You sent this order out over the wires to Branchville and to Orangeburg?

A. Together, yes, sir.

Q. It was repeated back to you by one operator first, and then the other one?

A. Orangeburg first and Branchville second.

Q. That was proper?

A. Yes, sir.

Q. That amounts to a receipt for it?

A. Yes, sir.

Q. And when it is repeated back in that way you write it in the book?

A. In the train order book, yes sir.

Q. This is what you wrote down when it was repeated back?

A. Yes, sir.

Q. And it was first repeated back by operator Jones of the Orangeburg office?

A. Yes, sir.

Q. Mr. Von Lehe was the operator at Branchville?

A. Yes, sir.

Q. They were on duty at the time that you sent this order?

A. Yes, sir.

Q. Is that order, as it appears on the train order book, exactly as it was sent out by you?

A. Yes, sir.

Q. The two words in the train order book "and operator"—were they sent in the order that you sent to Mr. Von Lehe and Mr. Jones?

A. Yes, sir, that order is what was sent.

Q. As appears in the book there?

A. Yes, sir.

Q. And those words "and operator" were in the order?

A. They were.

Q. You also told them as you sent it how many copies to make of the order?

A. Yes, sir.

Q. If it is a three copy order you address the operator, and call him, and tell him three copy, or five copy, and seven copy, etc.?

A. According to the number of trains affected, yes, sir.

Q. If one train is affected you made it three copies?

A. Yes, sir.

[fol. 46] Q. And two trains you make five copies?

A. Yes, sir.

Q. And three trains seven copies, etc?

A. That is correct.

Q. Of course, the order to Mr. Von Lehe and Mr. Jones was sent out simultaneously?

A. Yes, sir.

Q. What was the next thing after you sent this order that you heard in respect to either of the trains?

A. That the passenger train had been delayed.

Q. That is number 12?

A. Yes, sir.

Q. That moves where?

A. From Columbia to Charleston.

Q. That train had been delayed somewhere?

A. Yes, sir, at Riley.

Q. That is below St. Matthews?

A. Yes, sir.

Q. And Jamison is east of Riley?

A. Yes, sir.

Q. It is between St. Matthews and where the collision occurred?

A. Riley is.

Q. When you heard that the passenger train, number twelve, had been delayed at Riley, you sent a nineteen (19) or hoop order to Rowesville for train number 483 which had been started out?

A. Yes, sir.

Q. You told train number 483 to go into the packing house track east of Orangeburg and pass him?

A. Yes, sir, I said that number twelve would wait there, and 483 being an inferior train he would go in the siding.

Q. That was sent to Rowesville?

A. Yes, sir.

Q. That is about half way between Orangeburg and Branchville then?

A. Yes, sir.

Q. That was a nineteen (19) order that you sent?

A. Form nineteen (19), yes, sir.

Q. If number twelve had been on time it would have passed number 483 at Rowesville?

A. Yes, sir, or Felders.

[fol. 47] Q. Felders is a siding between Rowesville and Orangeburg?

A. Yes, sir.

Q. And is about half way between those two points?

A. Yes, sir.

Q. Well, there was no trouble about the movement in passing the passenger train?

A. None at all.

Q. The passenger train had evidently reached the packing house siding by the fair grounds, and extra 483, on which Mr. Dantzler was the engineer, and Mr. Youngblood was the conductor,—they went into the siding evidently?

A. Yes, sir, that is what they were to do.

Q. And the passenger train came on towards Charleston?

A. Yes, sir.

Q. That order was evidently understood and perfectly executed between those two trains?

A. Yes, sir.

Q. About what time did extra 483 pass Rowesville?

A. About 8:54, I think it was. I think that the order was completed at 8:52.

Q. It was probably delivered about two minutes afterwards?

A. Yes, sir.

Q. Mr. Witherspoon is the operator at Rowesville?

A. Yes, sir.

Q. You get weather reports also, don't you?

A. Yes, sir.

Q. It was time for a weather report?

A. They come in when there is an unusual condition.

Q. There is a regular report made at certain hours?

A. Yes, sir.

Q. Three times a day, I believe?

A. Yes, sir.

Q. And if there is an extraordinary condition, they report it at any time?

A. Yes, sir.

Q. Mr. Witherspoon, the operator at Rowesville, did report that it was very foggy there?

A. Yes, sir, he did.

[fol. 48] Q. That was proper for him to do so?

A. Absolutely.

Q. Now, after 483 had executed the movement at the packinghouse track, and number twelve had gone on to Charleston,—what was the next thing you heard in reference to this train movement?

A. I asked the operator at Orangeburg if extra 483 was coming, and we were trying to get it to Fort Motte as soon as possible, and it was only natural that I should follow it up all that I could.

Q. What did he say?

A. That it was coming.

Q. He can sit in the depot at Orangeburg in an alcove at the telegraph desk, and see both ways up and down the track?

A. I don't know, but some of the stations you can see and some you can't.

Q. He said that extra 483 was coming?

A. Yes, sir.

Q. What did you tell him?

A. To clear him and go to the west end of the passing track and wait for number 723.

Q. I believe the exact words on that question that you answered before,—the question was asked what did you tell him,—and you said I told him to clear him, to tell him to go to the west end of the pass track and wait on extra 723?

A. Yes, sir.

Q. That is what you told Mr. J. A. Tyson?

Q. He was the operator at Orangeburg?

A. Yes, sir.

A. Yes, sir.

Q. The dispatchers work in eight hour shifts?

A. Yes, sir.

Q. And so do the operators?

A. Yes, sir.

Q. Orangeburg has a twenty-four hour office?

A. Yes, sir.

[fol. 49] Q. It stays open day and night?

A. Yes, sir.

Q. Three operators were on duty?

A. Yes, sir.

Q. One goes on at midnight and stays until eight o'clock in the morning?

A. That is correct.

Q. And then the second one goes on at eight in the morning and comes off at four o'clock in the afternoon?

A. Yes, sir.

Q. And the third one is on from four in the afternoon until twelve o'clock midnight?

A. Yes, sir.

Q. You sent this order,—the principal train order in this case, to Mr. T. E. Jones?

A. Yes, sir.

Q. He was the operator at Orangeburg?

A. Yes, sir.

Q. He went off duty around eight o'clock in the morning?

A. Yes, sir.

Q. Then he was succeeded by Mr. J. A. Tyson, Jr.?

A. Yes, sir.

Q. You asked Mr. Tyson if train 483 was coming?

A. Yes, sir.

Q. He is the gentleman you gave the order to?

A. I gave him the verbal instructions that I have related.

Q. You had already sent the order?

A. Yes, sir.

Q. Now, Mr. Rogers, you have seen a copy of the Orangeburg copy of this train order?

A. Yes, sir.

Q. Was it or not addressed to the operator?

A. It was not.

Q. Under the rules governing the operation of trains on the Southern Railway system has this order number 18 coming as a holding order to number 483 and to number 723,—should it be addressed to the operator?

A. Yes, sir.

Q. Would it be necessary for the operator to hand to the crew of train number 483 a clearance card in clearing that train?

A. Yes, sir, two copies of the order and the clearance [fol. 50] card.

Q. When train number 483 arrived at Orangeburg, the duty of the operator was to hand to the conductor two copies of the train order and also give him the clearance card?

A. Yes, sir.

Q. And he should have given him your verbal instructions to go to the west end of the passing track at Orangeburg?

A. Yes, sir.

Q. He should have done that?

A. Yes, sir.

Q. In rule 208 there is a provision that when a train order is sent out for meeting as in this case, that special precautions must be shown for the safety of trains?

A. Yes, sir.

Q. There is a requirement on that subject?

A. Yes, there is.

Q. What special or extra precaution was made in this case?

A. I addressed the order to the operator, and also called attention of the operator to it when the train was coming in at the meeting point.

Q. That is what you did?

A. Yes, sir.

Q. Now, when you did that, Mr. Tyson said alright?

A. Yes, sir.

Q. He acknowledged the instructions?

A. Yes, sir.

Q. Soon after that—immediately after that—you were notified that this disabled train number 683 at Fort Motte had gotten in shape so that it could go on, and there was no reason for you to send number 483 further, and you told Mr. Tyson to go down in the passing track and get that train so that you could send them to Branchville?

A. Yes, sir.

Q. And soon afterwards the collision was reported?

A. Yes, sir.

Q. How soon afterwards?

[fol. 51] A. Twenty-five or thirty minutes afterwards.

Q. That is, that the collision was reported to you?

A. Yes, sir.

Q. About what hour did the collision occur?

A. About 9:35.

Q. The information about the weather being very foggy came about 8:30 that morning?

A. No, sir, about 8:50.

Q. When the order was given to the operator at Rowesville?

A. Yes, sir.

Q. That was before number 483 got there?

A. Yes, sir.

Q. About what time would you say that number 483 passed the station at Orangeburg?

A. It arrived at 9:25, or that is what the train sheet shows about it.

Q. I believe,—after you placed the order with the Rowesville operator in reference to 483 going west, the operator at Rowesville, Mr. Witherspoon, told you that it was foggy and he could not see very far?

A. Yes, sir.

Q. Relative to the clearance card which you authorized operator Tyson to give to the crew of number 483 to the west end of the passing track at Orangeburg,—what should have been Tyson's action in regard to that situation?

A. He should have given the crew a copy of that order which we term as a middle order, being addressed to the

operator, and a copy of 603, which is the clearance card, and an understanding.

Q. By an understanding you mean where he was to stop?

A. Yes, sir.

Q. At the end of the passing track?

A. Yes.

Q. The form of the clearance card is set out on page 62 of the rule book?

A. Yes, sir.

Q. It is known as form 603?

A. That is correct.

Q. The instructions which you gave Mr. Tyson was to tell [fol. 52] number 483 to go to the west end of the pass track, and wait on number 723?

A. Yes, sir.

Q. In other words, Mr. Tyson should have held the red board on him and made him stop, you expected him to stop and communicate with him?

A. Yes, sir, absolutely. That was the only way that he could get all of the information.

Q. This particular order,—number 18,—supposing it was not addressed to the operator, was it the operator's duty to hold that order there, not addressed to the operator, and still hold the board on that train and stop it?

A. Yes, sir.

Q. Your answers before was,—yes, sir, the order itself explained the conditions under rule 208?

A. That is correct.

Q. Then when the board is red there ought to be a clearance card given?

A. Yes, sir.

Q. When he has train orders and the board is red he ought to deliver copies of the train order and give a clearance card?

A. Yes, sir.

Q. As a matter of fact, you meant the number eighteen (18) order for a middle order when you placed it?

A. Yes, sir.

Q. If there is an omission in the order tell whether or not it is the duty of the operator to call it back?

A. Yes, sir, to repeat it.

Q. He should call the attention of the dispatcher to it?

A. Yes, sir.

Q. No one called your attention to the fact that the words "and operator" were omitted when the message was received?

A. No, sir.

Q. Neither Mr. Jones nor Mr. Tyson informed you that the words "and operator" were omitted?

A. No, sir.

[fol. 53] Cross-examination.

By Mr. Harley:

I succeeded Mr. Pearce, who went off duty at eight in the morning. I was just a dispatcher at that time. Now I am Chief Dispatcher on that division. Mr. Pearce worked eight hours and until eight in the morning, and then I took charge and worked until four in the afternoon.

Q. Both of these trains were extra trains?

A. Both were, yes.

Q. And extra trains can only run on what?

A. On a train order.

Q. On a written train order?

A. Yes, sir.

Q. They cannot run on verbal orders?

A. No, sir.

Q. No matter what class of train you have, none of them run on verbal orders?

A. No, sir, they do not.

Q. They either run on a written train order or on a schedule?

A. Yes, sir.

Q. You found out that morning that there was a disabled train at Fort Motte?

A. Yes, sir.

Q. You found that out when you went on duty?

A. Yes, sir.

Q. You had a crew at Branchville?

A. Yes, sir.

Q. And you ordered that crew out?

A. Yes, sir.

Q. That engine was known as number 483?

A. Yes, sir.

Q. And this train number 483 was ordered out to the relief of this disabled train at Fort Motte?

A. Yes, sir.

Q. You put out that order?

A. I did.

Q. That order went out at the same time to Branchville and Orangeburg?

A. Yes, sir.

Q. It was taken down by the operator at Branchville?

A. Yes, sir.

[fol. 54] Q. And at the same time taken down by the operator at Orangeburg also?

A. Yes, sir.

Q. It was taken simultaneously?

A. Yes, sir, at each office.

Q. B. V. is Branchville?

A. That is the abbreviation we use.

Q. And J. D. is Orangeburg?

A. Yes, sir.

Q. That order went out of your office at what time?

A. At 7:58.

Q. That morning?

A. Yes, sir, A. M.

Q. At St. Matthews,—they had only one operator there?

A. Yes, sir.

Q. That operator goes on duty at what time?

A. Eight o'clock in the morning.

Q. And works until what time?

A. Five in the afternoon.

Q. And that order was sent out by you at 7:58?

A. Yes, sir.

Q. And before the operator at St. Matthews went on duty?

A. Yes, sir.

Q. How far is St. Matthews from Orangeburg?

A. A little over twelve miles.

Q. And Stilton is beyond Orangeburg,—the place which the accident occurred is between Orangeburg and St. Matthews?

A. Yes, sir.

Q. About three miles west of Orangeburg?

A. Yes, sir.

Q. This order that you put out is generally known as a thirty-one (31) order?

A. Yes, sir.

Q. In your dispatcher's record, it shows that it was addressed in so far as the operator at Orangeburg is concerned,—it was addressed to extra 723 and operator?

A. Yes, sir.

Q. You sent it that way to Orangeburg?

[fol. 55] A. Yes, sir.

Q. However, it went to Branchville as just B. V.,—extra 723 gets this order and meet extra 483 at Orangeburg, etc.?

A. Yes, sir.

Q. When that was sent to the operator at Branchville there was nothing on that order whatever to indicate that either Mr. Youngblood or Mr. Dantzler would get another order at Orangeburg?

A. Nothing whatever.

Q. If this order had been taken down as you sent it to operator Jones at Orangeburg, who was succeeded by Tyson, and he had made five copies instead of three—two copies to be delivered to the engineer and conductor of extra 723, and two copies to be delivered to Conductor Youngblood and Engineer Dantzler when number 483 arrived at Orangeburg,—state whether or not in delivering the two copies to Dantzler and Youngblood if they would not have been duplicate copies of what they had in their possession already?

A. Exactly, yes, sir.

Q. They would have been duplicate copies of what they had already received at Branchville?

A. Yes, sir.

Q. When extra 483 approached Orangeburg, you talked with operator Tyson over the wire?

A. Yes, sir.

Q. Did he call you first?

A. I think I called him.

Q. You were anxious about the train?

A. Yes, sir.

Q. You knew that number twelve was going east?

A. Yes, sir.

Q. That was the passenger train?

A. Yes, sir.

Q. You gave the passenger train an order?

A. Yes, sir, a wait order.

Q. And number 483 got a nineteen (19) order at Rowesville?

A. Yes, sir.

Q. To go in the packing house track at Orangeburg?

A. Well, there was nothing in the order telling him to [fol. 56] go in there, but 483 was an inferior class train, and it was his duty to go in there.

Q. He would have to go in the packing house switch for the passenger train to go by?

A. Yes, sir.

Q. Because 483 was an inferior train?

A. Yes, sir.

Q. And it was inferior as to extra 723?

A. Yes, sir.

Q. When you called agent or operator Tyson and asked him about this train,—what did he say?

A. It was coming.

Q. What did you say to him?

A. To clear them and tell them to go to the west end of the pass track and wait on extra 723.

Q. What did you mean by that?

A. That he was to give him a copy of the order with the clearance card, and let him go down to the pass track and go in there.

Q. The order which he had when he approached that train order board, which we have called here the semaphore,—when he cleared him and let the board down,—what was his duty under the circumstances?

A. To carry out any previous orders that he might have.

Q. That was his duty?

A. Yes, sir.

Q. What was the order that he had?

A. To meet extra 723 at Orangeburg.

Q. What should he have done?

A. Headed in the east pass track switch and wait until extra 723 came.

Q. No matter whether the general copies of the order were given him or not?

A. No, sir.

Q. Or a clearance card?

A. No, sir.

Q. That was his duty under the circumstances?

A. Under the order he had, yes.

Q. When that board went down clearing him, he should have gone into the passing track?

[fol. 57] A. Yes, sir, fulfilling any order that he had in his possession that had not been fulfilled.

Q. Now, had this order that he had in his possesion been fulfilled?

A. No, sir, it had not.

Q. Had it been superseded?

A. No, sir.

Q. Or annulled?

A. No, sir.

Q. Then he should have gone into the passing track under the order that he had?

A. Yes, sir.

Q. And waited until extra 723 came to Orangeburg?

A. That is correct. That was his duty.

Q. And under all of the circumstances?

A. Yes, sir.

Q. Were any written orders outside of the order number 18 given to this train crew?

A. Yes, sir, the one at Rowesville directing him in reference to the opposing passenger train.

Q. That order was carried out?

A. Yes, sir.

Q. They passed it by going into the packing house track?

A. Yes, sir.

Q. And allowed that train to pass?

A. Yes, sir, allowed number twelve to pass.

Q. Which was the passenger train?

A. Number twelve was.

Q. Then after they executed that order,—they did what?

A. Proceeded under the previous order.

Q. Under order number 18 which you had given?

A. Yes, sir.

Q. It was to meet train number 723 at Orangeburg?

A. Yes, sir.

Q. Now, Mr. Rogers, you say that train extra 723 was a superior train to extra 483?

A. Yes, sir.

Q. Why do you say that?
A. By direction.
Q. Why?
A. Under the rules and also under special instructions contained in the time-table.
[fol. 58] Q. What under the rule and time table, and number 483 being an inferior train to one of the same class,—what was the duty of the engineer and fireman when this train had reached Orangeburg?
A. You mean of the conductor and engineer?
Q. Yes, sir.
A. They were supposed to meet extra 723 at Orangeburg.
Q. Did they do it?
A. No, sir.
Q. What did they do?
A. They ran by the meeting point.
Q. In running by that meeting point two or three miles west of Orangeburg, and running into the other train known as number 723,—was that or not in direct violation of the order that they had?
A. Yes, sir, it was.

Mr. Brown: The order speaks for itself, and I move to strike that out. The written order is in evidence here. They say that the written order is not ambiguous, and we move to strike his answer out, and we object to it. Let him put the rule and order in evidence.

Mr. Harley: If the Court please, we have been going into this same kind of testimony throughout this trial and the last trial.

The Court: I will let him answer it.

Mr. Harley (continuing):

Q. That was in direct violation of the order that he had?
A. Yes, sir.
Q. When he run by Orangeburg and failed to go into the pass track as directed?
A. Yes, sir.
Q. It was the only order he had telling him where to go?
A. Yes, sir.
[fol. 59] Q. There was nothing in that order that told him to go by Orangeburg?
A. Not until he had met the 723.

Q. He was to meet 723 at Orangeburg as directed?

A. Yes, sir, in order number eighteen.

Q. And when you addressed that in the Chief Dispatcher's office to number 723 "and operator", and when you sent that telegram out to Jones, the operator at Orangeburg, you meant for him to keep one copy for his file?

A. Yes, sir.

Q. And when number 723 arrived at Orangeburg to deliver the two other copies to the conductor and engineer of that train?

A. Yes, sir.

Q. And when number 723 arrived, number 483 was supposed to be in the pass track at Orangeburg?

A. Yes, sir.

Q. Waiting for what?

A. For number 723.

Q. When you issued that order number 18, sending out the extra 483,—you sent another order there telling them where another train, number 61 was?

A. I sent an order to number 61.

Q. Is this the train order book?

A. Yes, sir.

Q. What is that order before you?

A. Order number 19.

Q. This order that we have been talking about in this case is number 18?

A. Yes, sir.

Q. What is that "19" order?

A. The original meeting point of train number 12, the passenger train, and number 483, was that they were to meet at Rowesville. Number 61 was coming to Columbia.

Q. What was that order?

A. It was addressed to Orangeburg on a form "31", and it was a five copy order.

Q. What did it say?

A. Extra 723 east and operator,—Extra 723 east gets this [fol. 60] order, meet number 61, engine 513 at Orangeburg instead of Rowesville, and it was repeated by operator Tyson at Orangeburg at 8:22 A. M., and by operator Witherspoon at 8:22 also.

Q. Where was that train number 61 when extra 483 passed Orangeburg?

A. Somewhere around Orangeburg.

Q. You don't know where?

A. No sir, it was around Orangeburg somewhere.

Q. It was not on the main line?

A. No, sir, it was not.

Q. Now, as this train approached Orangeburg,—Engineer Dantzler having that order in his possession, and running under that order, and as it approached the semaphore board and it dropped—what did that indicate?

A. That there was no further orders at that station for extra 483.

Q. When he reached there he gave four blasts of the whistle for the signal?

A. For the train order signal.

Q. Then the red dropped?

A. Yes, sir.

Q. That is clearing number 483?

A. Yes, sir, at that particular station.

Q. When the red board dropped, what did that signify?

A. That there was no further orders.

Q. And he was to do what?

A. Proceed on the original orders that he had.

Q. When it dropped the agent at Orangeburg had no further orders for him?

A. That is right.

Q. Where should he have gone?

A. Number 483?

Q. Yes.

A. Headed in the east end of the pass track, and gone down to the west end of the pass track and wait on extra 723 to reach Orangeburg.

Q. Irrespective of a five copy order or a ten copy order or anything else?

A. It didn't make any difference.

[fol. 61] Redirect examination.

By Mr. Wolfe:

Q. The order that you have just read from the train order book, Mr. Rogers, that was sent to number 61?

A. Yes, sir.

Q. That is a local freight?

A. Yes, sir.

Q. The crew of extra 483 didn't know anything about that order, did they?

A. No, sir.

Q. It had no connection with train 483 at all?

A. No, sir, but it was on the same form as the order that was given to number 483.

Q. It was a meet order between number 61 and extra 723?

A. Yes, sir.

Q. You say the crew of number 483 never got that?

A. No, sir.

Q. Nor did they know anything about it at all?

A. No, sir.

Q. That was a meet order or middle order that you sent to Orangeburg for them?

A. Yes, sir.

Q. And the operator there could tell that by reading it?

A. Yes, sir.

Q. It was plain?

A. It was to me, yes, sir.

Q. And he could not make any mistake about that?

A. No, sir.

Q. If the operator on duty at Orangeburg had that order there and read it, and knew it was a meet order and all—it was his duty if there was not but three copies there to hold that board red and gone out and given it to the first crew that came in even though there were only three copies of the order there?

A. Yes, sir.

Q. The records show he did not do that?

A. No, sir.

Q. He dropped the board?

A. Yes, sir.

Q. When you gave Mr. Tyson those instructions, did you expect that he would hand a copy of the order number [fol. 62] eighteen to the crew, and also give the verbal understanding that you had given him?

A. Yes, sir, with a clearance card.

Q. In other words, you expected when you gave him those verbal instructions there that he had the red board against him, and that he would stop him there?

A. Yes, sir, that is true.

Q. You intended all of that as a matter of extra precaution?

A. Yes, sir.

Q. There were a good many trains moving along that particular track in there?

A. Yes, sir.

Q. That is from St. Matthews to Branchville?

A. Yes, sir.

Q. It was foggy?

A. Yes, sir, the weather condition was bad.

Q. That was reported to you?

A. Yes, sir.

Q. Mr. Witherspoon at Rowesville reported that the weather condition was bad or very foggy?

A. He said it was foggy.

Q. And that made you unusually particular about that?

A. No, sir, that is the rules.

Q. You used the extra precautions?

A. No more that morning than any other morning.

Q. The rules require you to use every precaution?

A. Yes, sir, at all times.

Q. That is rule 208, is it not?

A. Yes, sir, rule 208.

Q. It is in the last clause of that rule and it says, "a train order must not be sent to a superior train at the meeting point if it can be avoided. When an order is so sent, the fact will be stated in the order and special precautions must be taken to insure safety"?

A. Yes, sir.

Q. Orangeburg was a meeting point?

A. Yes, sir.

[fol. 63] Q. Extra 723 was to meet another train there?

A. Yes, sir, 483.

Q. And the rule says that when an order is so sent the fact will be stated in the order and special precautions will be taken to insure safety?

A. Yes, sir.

Q. That is what you were doing?

A. Yes, sir, absolutely.

Q. In case the operator has in his possession an absolute meet order, and there is one of the trains approaching that is to do the meeting, and either of the crews call for the board, is it not more important that the operator hold the board against such train?

A. If it is a meeting point, yes.

Q. Of course, Mr. Rogers, there is no record on the train order book about the verbal instructions you gave to Mr. Tyson on this morning?

A. No, sir.

Q. That is not customary?

A. No, sir.

Q. You only record the train orders in this book?

A. That is correct.

Q. You have no record of the handling of special instructions.

A. No, sir.

Q. You are dealing directly with the operator?

A. Yes, sir.

Q. What did you expect the operator to do—give him a clear board?

A. No, sir, he had the middle order according to the rules.

Q. What did you expect him to do?

A. He was to hold his board red, give him a copy of 603, and an understanding that he would go to the west end and wait until extra 723 arrived. In giving him that information I was just trying to be as careful as I could. It was an extra precaution.

Q. I am not sure that I asked you this—if the words "and operator" were omitted out of that order, the operator [fol. 64] affected ought to have notified you of it?

A. Yes, sir.

Q. Now, Mr. Rogers, on the clearance card form—it reads as follows: (Reads form of clearance card—form 603 in the rule book of the Company)—that is on the form 603 of the clearance card?

A. Yes, sir.

Q. The semaphore board stands out at stop when the operator is on duty?

A. Yes, sir.

Q. And operators are on duty all of the time at the Orangeburg office?

A. Yes, sir.

Q. That means then when a train is stopped by the semaphore board—this clearance card, form 603, should be issued in lieu of giving him a clear board?

A. If he did not have any orders for that particular train, yes, sir.

Q. But the operator on duty at Orangeburg did have orders?

A. Yes, sir.

Q. And he had additional instructions from you?

A. Yes, sir.

Q. And therefore he ought not to have dropped that board from the red signal?

A. No, sir.

Q. That was a violation of the rules in the management there at Orangeburg?

A. Yes, sir.

Q. Why did you tell him to go in the west end of the pass track?

A. I said to go to the west end, but to go in the east end of the pass track. Sometimes you see a local freight only has a few cars, and he stays there an hour unloading, and sometimes there is only three or four or five cars in a train, and they will pull in another track and leave the pass track clear.

Q. Under these instructions you intended extra 483 to go to the west end and head in there?

A. No, sir, to go in the east end of the pass track, and go to the west end and wait on extra 723 for which they had an order to meet.

[fol. 65] Q. You didn't know where number 61 was?

A. No, sir, but that yard limit rule would take care of that, and it made no difference where it was.

Q. It was around Orangeburg, you say?

A. Yes, sir, somewhere in the yard or in the spur tracks there.

Q. It was doing local work?

A. Yes, sir.

Q. It was the local freight?

A. Yes, sir.

Q. Now, if the meet order had been fulfilled by the previous arrival of number 723, the only thing necessary for number 483 to leave Orangeburg was to get the clear board?

A. No, sir.

Q. Why?

A. He would have to identify 723, and know that it was there first.

Q. That would have been all that was necessary after number 723 had arrived?

A. Yes, sir.

Q. If the 723 had arrived at Orangeburg before the train 483, the meet order would have been fulfilled?

A. Yes, sir.

Q. Any train orders or verbal instructions that Mr. Tyson had for him,—he should have given them to him by holding the red board on him, and go out and give them to him?

A. Yes, sir.

Q. And he did have verbal instructions from you for the train 483?

A. Yes, sir, what I have said.

Q. He should have given him those instructions along with the two copies of the order and the clearance card on form 603?

A. Yes, sir.

T. E. JONES, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

[fol. 66] On January 3rd, 1924, I was working for the Southern Railway Company at Orangeburg as one of the operators. I went on duty at mid-night on the third of January, 1924, and continued on duty the next morning until *ba*out eight o'clock. I am still an operator, and I now work at Sumter. Mr. Tyson was the operator that relieved me on the morning of January 3, 1924. He came on a little after eight o'clock, about 8:01, I think it was. He came in just as I completed the order number eighteen. Then I made a transfer of what I had to Mr. Tyson, and went off duty at that time.

Q. Mr. Tyson succeeded you?

A. Yes, sir.

Q. He had to sign for it?

A. Yes, sir.

Q. He signed for it then?

A. Yes, sir.

Q. That is required in the rules of the Company?
A. Yes, sir, when we turn it over to him.
Q. You turned over to him such messages or orders that you had in your office?
A. Yes, sir.
Q. Then you went home?
A. I did.
Q. Did you turn over order number eighteen to Mr. Tyson, the operator that succeeded you?
A. Yes, sir.
Q. You took that order, didn't you?
A. Yes, sir, before I went off duty.
Q. Mr. Rogers, the dispatcher in Charleston, sent it?
A. Yes, sir.
Q. Did that message when it was sent to you have the words "and operator" in it?
A. No, sir.
Q. It came to you as a three copy order?
A. Yes, sir.
Q. You took it as such?
A. Yes, sir.
Q. You turned over to Mr. Tyson, who succeeded you as operator, a three copy order?
A. Yes, sir.
Q. It came to you as a three copy order?
A. Yes, sir, it did.
Q. And you took it as such, you say?
[fol. 67] A. Yes, sir, I did.
Q. That was a middle or a meet order?
A. Yes, sir, a meet order.
Q. You could tell that by reading it?
A. Yes, sir.

(No cross-examination.)

J. A. Tyson, Jr., a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I am thirty years of age, and live at Orangeburg. My business is ticket agent and telegraph operator for the

Southern Railway Company, and I still work for the Southern Railway at the Orangeburg office. I was working there as telegraph operator on January 3, 1924. Orangeburg is a day and night office. It stays open twenty-four hours, and has three operators. At that time the other operators were Mr. Dukes and the Mr. T. E. Jones who has just testified. Each of us worked eight hours. On the morning of January 3, 1924, I went on duty at eight o'clock, relieving operator Jones. My hours were from eight A. M. until four P. M. Mr. Rogers was the dispatcher on duty in Charleston when I went on duty. He is now Chief Dispatcher, and has just testified in this trial. The operator whom I succeeded turned over some train orders to me.

Q. Did he transfer to you an order known as order number 18?

A. Yes, sir.

Q. That was a thirty-one (31) order?

A. Yes, sir.

Q. He turned two train orders over to you?

A. Yes, sir.

Q. One of these was a train order, serial number [fol. 68] eighteen?

A. Yes, sir.

Q. You have seen that order several times?

A. Yes, sir.

Q. That order reads extra 723 gets this order, and meets extra 483 east at Orangeburg. Engine 483 run extra from Branchville to Andrews?

A. Yes, sir.

Q. Did you read the two orders that Mr. Jones turned over to you?

A. Yes, sir.

Q. About how long after you went on duty?

A. Fifteen or twenty minutes.

Q. Did this order number eighteen have the words "and operator" in the address?

A. No, sir.

Q. How many copies of that order did Mr. Jones give you?

A. Three copies.

Q. You had all three on the table where he left them?

A. Yes, sir.

Q. When that train order, known as a "31" in railroad parlance, is sent one is kept in the office for the file or record of that office?

A. Yes, sir.

Q. A three copy order would be one kept in your office?

A. Yes, sir.

Q. And two delivered to the train affected?

A. Yes, sir.

Q. And a five copy order,—one copy would be kept in your office, and four copies delivered to the two train crews affected?

A. Yes, sir.

Q. Of those three train orders one copy was for your office?

A. Yes, sir.

Q. Of the two others, what would you do?

A. Deliver them to extra 723.

Q. That was the train going east?

A. Yes, sir.

Q. Why?

A. Because they were addressed to extra 723 east.

Q. The conductor should have signed for it and kept both [fol. 69] copies then?

A. Yes, sir.

Q. One for the engineer and one copy for himself?

A. That is it.

Q. The 723 never did arrive?

A. No, sir.

Q. Passenger train number twelve from Columbia to Charleston came in about what hour?

A. About 9:02 or 9:01.

Q. It was a few minutes late?

A. I don't remember now.

Q. Number twelve, the pasenger train, when it came in there the passengers got on and off, and it then proceeded on its way?

A. Yes, sir.

Q. Then after you went on duty you had another train order from the dispatcher in Charleston for the 483 to go in the packing house switch and let number twelve, the passenger train, go by?

A. I had an order for train number twelve to wait at the packing house for number 483.

Q. You delivered that to them?

A. Yes, sir.

Q. Number twelve was to wait at the packing house switch?

A. Yes, sir.

Q. Number twelve stayed on the main line?

A. Yes, sir.

Q. And number 483 went in on the side track?

A. Yes, sir.

Q. There was no trouble there?

A. No, sir.

Q. Then 483 came on to Orangeburg?

A. Yes, sir.

Q. The packing house track is about one-half a mile east of Orangeburg?

A. Yes, sir, about that.

Q. And near the Fair grounds?

A. Yes, sir.

Q. When you saw 483 coming what did you do?

A. I told the dispatcher he was coming.

Q. What did the dispatcher tell you?

A. To clear him and let him go to the east end of the pass [fol. 70] track.

Q. Didn't he say to let him go in at the west end of the pass track?

A. No, sir, to the east end and then go to the west end.

Q. He said clear him and let him go in the pass track?

A. Yes, sir.

Q. He didn't tell you to tell him anything?

A. No, sir.

Q. You had only three copies of the train order "31"?

A. Yes, sir.

Q. You had no copies to give to the crew of number 483?

A. No, sir.

Q. The words in an order "and operator" means five copies of the order?

A. Yes, sir.

Q. The order turned over to you—order number eighteen (18) was not addressed "and operator"?

A. No, sir.

Q. Mr. Rogers said to you to do what?

A. To clear extra 483, and let him go to the west end of the pass track.

Q. Or yard at Orangeburg?

A. Yes, sir, he said that.

Q. To clear him and let him go to the west end of the pass track or yard at Orangeburg?

A. Yes, sir.

Q. The pass track was pretty long?

A. Yes, sir.

Q. It went back there nearly a mile from the depot?

A. Yes, sir.

Q. Now, the east end of the pass track is about how many feet from your office and the semaphore board?

A. It is about seventy-five yards west of my semaphore board, I would say.

Q. In front of your semaphore board and office, there is only one track?

A. Yes, sir.

Q. And that is the main line?

A. Yes, sir.

[fol. 71] Q. Extra trains move only by train orders?

A. Yes, sir.

Q. The semaphore board only controls the main line?

A. It is only a train order signal, and it does not control the main line at all. That is, if we have train orders for them, and if not then they have a right to proceed with what orders they have.

Q. All train orders are sent out by the train dispatcher in Charleston?

A. Yes, sir.

Q. That is for the Charleston division?

A. Yes, sir.

Q. You all are in the Charleston division?

A. Yes, sir.

Q. The dispatcher is located at Charleston?

A. Yes, sir.

Q. The dispatcher there has control of the movement of trains on your line?

A. Yes, sir, via Orangeburg.

Q. You work under him?

A. Yes, sir.

Q. You are supposed to take such orders he gives as regarding the movement of trains?

A. Yes, sir.

Q. The train crews are supposed to obey the orders given by the dispatcher through you and the other operators along the line?

A. Yes, sir.

Q. That is the way the trains are moved?

A. Yes sir.

Q. And those train orders come from the dispatcher's office in Charleston?

A. Yes, sir.

Q. And are distributed to the train crews along the road by the operators?

A. Yes, sir.

Q. At the time extra 483 was coming up, the semaphore board at Orangeburg was at normal position?

A. Yes, sir.

Q. Both arms were red?

A. Yes, sir.

[fol. 72] Q. When 483 came up on this occasion the semaphore board was standing out red?

A. Yes, sir.

Q. That is when you called the dispatcher?

A. Yes, sir.

Q. Why did you call him, Mr. Tyson—wasn't it because you didn't have but three copies of the order?

A. It is our duty to notify the dispatcher when a train is coming in, especially an extra.

Q. You noticed then you had only three copies?

A. Yes, sir.

Q. You had only received three copies from Mr. Jones?

A. That is all.

Q. You called to report the arrival, and wanted to know what the dispatcher wanted done with number 483?

A. Yes, sir.

Q. There were no orders there for 483?

A. No, sir.

Q. You told the dispatcher he was coming?

A. Yes, sir.

Q. You wanted to know what to do with it?

A. Yes, sir, I told him he was coming.

Q. When Mr. Dantzler, the engineer on extra 483, approached Orangeburg he blew four blasts of the whistle?

A. Yes, sir.

Q. Then you dropped the board?

A. Yes, sir.

Q. You did that because you had no orders for him?

A. Yes, sir.

Q. And he went on by?

A. He did.

Q. Now Mr. Rogers, the dispatcher in Charleston, had given you some verbal instructions when you called him up?

A. He said to clear 483.

Q. You had a conversation with him over the wire?

A. Just a conversation, yes, sir.

Q. That had reference to train 483, didn't it?

[fol. 73] A. Yes, sir.

Q. Now, Mr. Tyson, when the train came up, and just before and at the time Mr. Dantzler blew the four blasts, the semaphore board was in the position of the top picture or figure on page 46 of the rules, wasn't it?

A. It was, yes, sir.

Q. And when he blew the four blasts of the whistle, then you dropped it to the picture or figure of the semaphore board on the bottom of page 46 of the rule book as shown in here?

A. Yes, sir.

Q. Now, in the rule book, Mr. Tyson, when the board is dropped, the reading below that is this: Indication proceed,—name, clear signal?

A. Yes, sir.

Q. That is in the rule book?

A. Yes, sir.

Q. And is shown on page 46, as you will see?

A. That is correct.

Q. Now, that order that you had,—that serial order number 18,—is known as a meet order or middle order?

A. Yes, sir, a meet order.

Q. What is the difference between a meet and a middle order then?

A. The words "and operator" combined with the address of the train makes it a middle order.

Q. In other words, it was not a middle order then, but a meet order?

A. Yes, sir.

Q. Because it didn't have the words "and operator"?
A. No, sir.
Q. You could see it was a meet order?
A. Yes, sir.
Q. Did you give the crew of extra train 483 a clearance card as it came up?
A. No, sir, I gave them a clear signal board.
Q. When you were asked the question before,—did you give him a clearance card,—you answered I gave him the [fol. 74] board to proceed?
A. That is correct.
Q. All you did after you talked with dispatcher Rogers in Charleston was to drop the board?
A. Yes, sir.
Q. You did not give him a clearance card as provided for by the rule book and by form 603?
A. No, sir.
Q. Did you give him the verbal instructions that Mr. Rogers, the dispatcher in Charleston, had given you?
A. He didn't tell me to tell him.
Q. There was nothing in the order instructing the crew of train 483 to go to the west end of the pass track at Orangeburg?
A. No, sir.
Q. That is to say, in the written order?
A. No, sir, only to meet the 723 at Orangeburg.
Q. I believe you said that the order which is in evidence here is a dead meet order?
A. Yes, sir.
Q. And it did not have the words "and operator" in it at all?
A. No, sir.
Q. Now, that train order is subject to being changed or superseded at any time?
A. Yes, sir.
Q. And whenever the train from the opposing direction came in it would be fulfilled?
A. Yes, sir.
Q. A dispatcher is the only man that can change the orders?
A. Yes, sir.
Q. The dispatcher controls the movement of extra trains?
A. Yes, sir, by train orders.

Q. And he can change a regular train?

A. Yes, sir, by train order.

Q. Therefore, the dispatcher at Charleston is in complete charge of all trains?

A. Yes, sir.

Q. The dispatcher at Charleston handled the train extra 483 through the various operators along the line?

A. Yes, sir.

[fol. 75] Q. Mr. Jones was one of them?

A. He copied the order.

Q. He was on duty at Orangeburg?

A. Yes, sir.

Q. And he received the order at that office?

A. He did.

Q. And you were one of them?

A. Yes, sir.

Q. Number 723, coming in the opposite direction, had not yet arrived?

A. No, sir, it had not.

Q. And, therefore, had not yet gotten that order?

A. No, sir.

Q. Now, by dropping the semaphore board you were lapping number 483 beyond his territory and into the territory of extra 723?

A. The 483 had orders to go in the east end of the pass track and it was necessary to go beyond my station to get into the pass track.

Q. But you had orders from your superior officer, dispatcher Rogers, to tell him to go into the west end of the pass track?

A. No, sir, not to tell him, but he said to let him go to the west end of the pass track.

Q. You knew extra 723 was coming from the opposite direction?

A. Yes, sir.

Q. You knew the weather conditions were bad?

A. Yes, sir.

Q. It was very foggy?

A. Yes, sir.

Q. You could hardly see any distance?

A. Not more than fifty feet, I don't guess.

Q. You never saw a fog like that in your life, did you?

A. No, sir.

Q. If you had two copies of that order for train number 483 and if it had been addressed to the operator, you would have had five copies of it, then you would have had to have held the board on 483, and have delivered to 483 two copies of that order?

A. Yes, sir, if it had been addressed to the operator.

[fol. 76] Q. And in addition to that you would have had to have given him a clearance card?

A. Yes, sir.

Q. As prescribed in form 603?

A. Yes, sir.

Q. Now, if the order had been addressed to "and operator" at Orangeburg, you would have held the red board on him and stopped him, you would have gone out and stopped him and given him copies of the order,—the two copies,—and a clearance card?

A. Yes, sir.

Q. As the order was not addressed to the operator you didn't consider it your duty to hold the board on 483?

A. No, sir.

Q. And that was the reason?

A. Because it was not addressed "and operator."

Q. If it had been addressed "and operator," and you had had the copies there, you feel confident that you would have held the red board on him and gone out and given him the clearance card?

A. Yes, sir.

Q. Well, if the dispatcher had not told you to clear him, you feel confident that you would have had the red board on the extra 483?

A. What was my answer in that record before?

Q. I will read the whole question to you,—Say that the dispatcher told you that, was it not your duty to hold the board on number 483 and give him a card, stating on the card that he met extra number 723,—could you not have done that although he said clear him,—when asked that question, your answer was "Well, I feel confident that I would have had the red board on the extra had he not said clear him."

A. Yes, sir.

Q. That is your answer to that question?

A. Yes, sir.

Q. If the order had been addressed to the operator you would have cleared him with a clearance card?

A. Yes, sir, and copies of the order.

[fol. 77] Q. You would have given him the two copies of the order and the clearance card?

A. Yes, sir.

Cross-examination.

By Mr. Harley:

Q. There is no block system there at Orangeburg?

A. No, sir.

Q. You have just what they call a train order board?

A. Train order signal board.

Q. That is shown in the rule book, and is what they call a semaphore board?

A. Yes, sir.

Q. With the red out?

A. Yes, sir.

Q. And that means stop?

A. Yes, sir.

Q. The red is always out?

A. Yes, sir.

Q. When this approached Orangeburg, as I understand it, you had a talk with the dispatcher over the wire at Charleston?

A. Yes, sir.

Q. And he said let him go by and go into the pass track at Orangeburg?

A. Yes, sir.

Q. To the west end?

A. Yes, sir.

Q. When he made that statement how far was the train number 483 from your train order board?

A. He was right up to the station.

Q. How far from the board?

A. Fifty or seventy-five feet.

Q. And had stopped?

A. He was drifting over that crossing.

Q. It is how far from the board?

A. About seventy-five feet.

Q. Did the train stop?

A. No, sir, he drifted on by.

Q. On by your station?

A. Yes, sir.

Q. Did extra 483 stop at all before he came to your station?

A. No, sir, I don't think.

Q. When you dropped the board, what did it mean?

[fol. 78] A. To proceed.

Q. How far was the train from the semaphore board when you dropped it?

A. About seventy-five feet.

Q. You say he was coming across the crossing?

A. Yes, sir, he was drifting across.

Q. When you dropped it it was to proceed?

A. Yes, sir.

Q. Where?

A. To proceed on the orders that he had.

Q. What orders did he have?

A. He had orders to meet extra 723.

Q. When he passed your office where you were at the time, and after you dropped the board—where did you assume that he went?

A. I thought he went in the pass track and on up in the yard towards the other end.

Q. That long track is used exclusvely by trains to pass?

A. Yes, sir.

Q. How far does it commence from the depot?

A. About seventy-five yards west of the semaphore board and my office.

Q. The semaphore board is at your office and directly in front of it?

A. Yes, sir.

Q. A train that is to use that pass track or side track, it is necessary for it to go by your office and the semaphore board?

A. Yes, sir.

Q. That is in the direction of Columbia?

A. Yes, sir, going west.

Q. About how long is that pass track?

A. About three-fourths of a mile, I would say.

Q. Was there a train in there at the time?

A. A local freight train, number 61.

Q. Was in the pass track?

A. Yes, sir.

Q. Which way was it going?

A. Going west in the same direction extra 483 was [fol. 79] going.

Q. Towards St. Matthews and Columbia?

A. Yes, sir.

Q. You had another order affecting train number 483 that you delivered to the passenger train number twelve?

A. Yes, sir, to wait at the packing house spur for number 483 to come.

Q. You delivered that order to number twelve?

A. Yes, sir.

Q. It proceeded down east towards Branchville?

A. Yes, sir.

Q. And waited until 483 went into the packing house track?

A. Yes, sir.

Q. Then 483 backed out of that track, and proceeded on to Orangeburg?

A. Yes, sir.

Q. Now, this order number eighteen was the only order that Mr. Dantzler and Mr. Youngblood, the engineer and conductor of number 483, held, moving this train?

A. Yes, sir.

Q. That order directed them to meet extra 723 at Orangeburg?

A. Yes, sir.

Q. And when that order was turned over to you, it was generally known as a "31" three copy order?

A. Yes, sir.

Q. When you got that order extra train number 723 was up west of Orangeburg, was it not?

A. Coming east, yes, sir.

Q. But it was west of Orangeburg?

A. Yes, sir.

Q. That order specifically stated that 483 should meet extra 723 at Orangeburg?

A. Yes, sir.

Q. That was the order in the possession of engineer Dantzler and conductor Youngblood?

A. That was the order they had.

Q. And in order to get by the semaphore board, or what [fol. 80] we generally call the train order board—it is necessary for you to drop the board?

A. It is necessary for him to go beyond my board to get in the pass track.

Q. In order to get by that board or go by your station it is necessary for you to drop the board?

A. Yes, sir.

Q. And give him a clear track?

A. Yes, sir.

Q. And in order to go in the passing track, it was necessary to go by the semaphore board and the depot in which you work?

A. Yes, sir, in the way 483 was going.

Q. It was going west?

A. Yes, sir.

Q. And the pass track was west of the semaphore board and the station?

A. Yes, sir.

Q. And he having no further orders, except to meet extra 723 at Orangeburg, you assumed when you dropped the board that he would go into the pass track in order for extra 723 to come by on the main line?

A. Yes, sir.

Q. That order, as you stated, was a "31", three copy order?

A. Yes, sir.

Q. You were to keep one copy for your files?

A. Yes, sir.

Q. Then the other two copies—it being addressed to extra train 723—you were to deliver the two copies to the engineer and conductor of number 723 when it arrived?

A. Yes, sir.

Q. And that would be after number 483 had gone into the siding or pass track?

A. Yes, sir.

Q. Now, 723, under the rules and under the time table, was a superior train to extra 483, was it not?

A. A. Yes, sir.

Q. It was superior by direction?

A. Yes, sir, 723 was.

Q. You have yard limit rules in Orangeburg?

A. Yes, sir.

[fol. 81] Q. Under your yard limit rules this train with the orders—this train approaching your station, and you

dropping the red board of the semaphore—what was the duty of the engineer—go on by and go in the pass track?

A. Yes, sir.

Q. Under the yard limit rules?

A. Yes, sir.

Q. Now, is it not a fact that if this order as transmitted by the dispatcher in Charleston at your office, had been taken down as a five copy order, and two copies delivered to the engineer and conductor of extra 723, and two copies to Mr. Dantzler and Mr. Youngblood of extra 483 when it arrived—then when you gave Mr. Youngblood and Mr. Dantzler two copies of the order it would have been duplicates of what they already had?

A. Yes, sir.

Q. They knew where they were going?

A. Yes, sir.

Q. And they had the order in their possession?

A. Yes, sir.

Q. And they had an order to meet extra 723 in Orangeburg?

A. Yes, sir.

Q. And number 723 under that order, and also it being a superior train under the rules and under the time table, it had the right of the main line?

A. Yes, sir.

Q. And when this extra number 483, under the yard limit rule, when it passed your station and went by Orangeburg, and failed to go into the pass track, it violated the rules of your Company?

A. Yes, sir.

Q. And every rule?

A. Yes, sir, they did.

Q. So you say when that semaphore board drops it means for the train to proceed?

A. Yes, sir.

Q. It means also that you have no orders or further orders for them?

A. It means that I have no further orders when I pull the board down.

[fol. 82] Q. And you having no further orders for them when they passed—what was their duty?

A. To carry out the orders that they had in their possession already.

Q. And that was to go into the pass track and let extra 723 go by?

A. Yes, sir.

Q. To go into the west end of the pass track?

A. To get in the pass track, yes, sir.

Q. Now, the west end of the pass track is the end towards the Columbia side?

A. Yes, sir.

Q. The east end is towards the semaphore board?

A. Yes, sir.

Q. To go in the west end of the pass track—a train going west, and for a train to go by it on the main line—all that train has to do is to pull out and go if it backs in the west end of pass track?

A. Yes, sir.

Q. If it goes in the east end of the pass track it has to back out?

A. If cars or a train are in the pass track also it would have to, but otherwise not.

Q. And that was the most convenient place for that train to have gone at that time?

A. In the west end, yes, sir.

Q. Now, the only order that you received affecting this train 483 was order number eighteen?

A. Yes, sir.

Q. That is the only written order?

A. I received one for the passenger train to wait on number 483 at the packing house.

Q. That was delivered to number twelve?

A. Yes, sir.

Q. A copy of that order was not given by you to the engineer or conductor of number 483.

A. No, sir, it was not.

Q. That order was carried out by the number twelve?

A. Yes, sir.

Q. And the only order after extra 483 met number [fol. 83] twelve—this order number eighteen that is in evidence here, is the only order that they had?

A. Yes, sir.

Q. Affecting the movement of that engine?

A. Yes, sir.
Q. And they had no further orders?
A. That is all.

Redirect examination.

By Mr. Wolfe:

Q. On direct examination I asked you whether or not the train order signals apply only to the main track—rule number 221 of the rule book states "a fixed signal must be used at each train order office, which shall indicate "stop" when there is an operator on duty except when changed to indicate "19" train order or to "proceed" to allow a train to pass for which there are no orders. It must not be changed to "proceed" for a train while a train order remains undelivered for a train in that direction. A train must not pass a train order signal while "stop" or "approach with caution" is indicated without receiving clearance card Form 603, (and train orders, if any), except to do station work or to reach entrance to the siding under proper protection; in such cases it must not proceed or again occupy the main track without receiving clearance card Form 603 or form 886."

A. That is true.

Q. And is rule number 221 in this rule book of the Company?

A. Yes, sir.

Q. Now, having reference to the dispatcher telling you to clear number 483, when you were asked this question—you were asked the question "but you would not have cleared him had he not told you so"—and you answered that "I don't think I would have"?

A. That is correct.

Q. Then you obeyed your instructions to clear him?

[fol. 84] A. Yes, sir.

Q. To what point did you clear him?

A. That cleared him from Orangeburg. I answered that in that way. I cleared him as far as he stopping at my telegraph office was concerned.

Q. You didn't tell extra train 483 to stop at the west switch?

A. No, sir.

Q. You didn't even talk with the conductor did you?
A. No, sir, I did not.
Q. Nor the engineer?
A. I did not.

Mr. Wolfe: If the Court please, we offer in evidence the rule book of the Southern Railway System, which was made effective August 31st, 1923, and we will use only such portions as are relevant or affect this case.

H. C. Huggins, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I reside now in the City of Orangeburg, and my business is that of merchant. I am 53 years of age, and I was a locomotive engineer for approximately fifteen years before my injury. I have not been able to work any on the road since my injury. While a locomotive engineer I worked for the Southern Railway, the Seaboard Air Line and for the Atlantic Coast Line Railroad Company. I had very little yard experience, and practically all my service was main line service in all branches. The Charleston Division of the Southern Railway Company operates what is known as a single track system.

Q. What signals are used on the operation of the trains from Columbia to Charleston?
A. Semaphore boards.
Q. There is one of those beside each station where there [fol. 85] is an operator?
A. Yes, sir.
Q. That semaphore board looks like this figure shown on page 46 of the rule book of the Southern Railway, which book is in evidence,—it looks approximately like that (indicating to the witness)?
A. Yes, sir, that is it.
Q. Each one may have a little minor difference about it like different heads, etc.?
A. Yes, sir.

Q. But this is about the type that is used?
A. Yes, sir.
Q. There is no material difference?
A. No, sir, no material difference.
Q. You have lived at Orangeburg some time?
A. Yes, sir.
Q. You know the Southern railway tracks and depot and vicinity around there?
A. Yes, sir.
Q. Tell whether or not those pictures that have been offered in evidence show the depot and the semaphore board and the general surroundings.
A. Yes, sir.
Q. You have seen those?
A. Yes, sir.
Q. What train movement or movements does the semaphore board control?
A. It controls all of them.
Q. On what line?
A. On the main line. It has nothing to do with the yard at all, but it controls the main line.
Q. The yard is not affected?
A. No, sir.
Q. Or it has nothing to do with the side tracks?
A. No, sir.
Q. To what track does the semaphore give signals?
A. To the main line only.
Q. Now, when the board, semaphore board,—is standing out with both arms out in a normal position,—that is what you call red?
A. Yes, sir.
Q. Can a train pass those semaphore boards when they [fol. 86] are standing out in normal position red?
A. No, sir.
Q. When the red board is on the train then the train cannot pass that board?
A. No, sir.
Q. When one arm of the board is dropped,—then what?
A. For the movement of a train only one goes down.
Q. When one is dropped what does that signify?
A. A clear track ahead.
Q. In respect to the main line?
A. Yes, sir.

Q. Because that refers only to the main line?

A. Yes, sir.

Q. And it does not affect the yards or the side track, as you have stated?

A. No, sir.

Q. And that is what is meant at the bottom of the picture, when it states "indication proceed,"—"name Clear signal"?

A. Yes, sir.

Q. Who operates the semaphore board?

A. The operator where the board is located.

Q. In the depot?

A. Yes, sir.

Q. The train movements are controlled by the dispatchers?

A. Yes, sir.

Q. They convey the orders to the operators along the line of road?

A. Yes, sir,—that board is made red and white by instructions of the dispatcher, and an operator would not drop it without orders.

Q. The train dispatcher controls the movement of trains?

A. Yes, sir.

Q. That is his function?

A. Yes, sir, absolutely.

Q. The operators act when he tells them and ought to do what he says to do?

A. Yes, sir.

Q. When a train gets a meet order, what is their duty in approaching a station where they are to meet another train?

A. If a signal board is there?

[fol. 87] Q. Yes.

A. He makes four blasts of the whistle to know whether that board is going to remain red on him, or whether they have not got anything, and if they have anything for him it is held red, and if not he clears him.

Q. When the engineer comes up he blows the four blasts of the whistle?

A. Yes, sir.

Q. And if there is nothing there affecting or controlling his train, what does the operator do?

A. When he sees him coming or gets information that he is coming he tells the dispatcher, and the dispatcher tells him to go on and he drops the board.

Q. When the board is held red,—what does the engineer do?

A. Stop until he gets a train order and a clearance card permitting him to go on.

Q. A train coming up cannot pass that board until it is dropped white?

A. Yes, sir, and when that board was dropped to white he gave him a clearance order right there.

Q. When the board was dropped to white?

A. Absolutely.

Q. When the operator dropped that board what did that mean?

A. Clear to the next telegraph station or block signal.

Q. I think they say that is St. Matthews?

A. Yes, sir.

Q. That is between Orangeburg and Columbia?

A. Yes, sir.

Q. On the Southern Railway line?

A. Yes, sir.

Q. Now, if he had a meet order,—a middle order and a meet order are practically the same thing?

A. A middle order is an extra precaution or should have been in this case, and with that middle order there it would have been absolutely impossible for that man to get by the [fol. 88] semaphore board, because he knew that the order had not been fulfilled, superseded or annulled.

Q. That train order with the words "and operator" in it, ought to have been a five copy order?

A. Yes, sir, as an extra precaution. That order is not a safe order at its best, and wherever it is placed all extra precautions should be used for the protection of both crews and for the Company, and where that middle order was placed there and it was delivered to the engineer and conductor that would give them an extra precaution, and that board could not have been dropped, and if they told him to drop it he knew his order was there, and he should not have gone on, and when the board was dropped it was putting him into another man's territory, and as a matter of fact

that pass track is on the other side, and he would be in another man's territory to get in there, and that pass track should be on both sides of the depot so that he could go in without interfering with the board, and if the operator had given him his two copies of the order, and the operator had given him a clearance card saying we had no further orders for them or for your train, then the gentlemen could have gone into the west end of the passing track and waited. Then, again, when the engineer went to the west end of the passing track he found that switch red as the testimony shows——

Mr. Blatt: We submit that there is no testimony that anything was found red, and this gentleman is only volunteering testimony. He should state the facts and not argue the case or state testimony.

The Court: Yes, sir, state the facts.

Mr. Wolfe (continuing):

Q. Then you are familiar, Mr. Huggins, with the tracks and lay out at Orangeburg?

A. Yes, sir.

[fol. 89] Q. The pass track does not come by a semaphore board?

A. No, sir, it does not.

Q. It is about 225 feet beyond the board?

A. Yes, sir, at least that far.

Q. On the west side?

A. Yes, sir.

Q. And that is towards Columbia?

A. Yes, sir.

Q. In your opinion is that safely arranged or should it be extended by the semaphore board eastward?

A. No, sir, it is not safe at all because a man has to go by his territory, and into another man's territory over the meeting point described in the order.

Q. Then you do not consider that that is a safe arrangement at Orangeburg?

A. No, sir, not at all.

Q. Now, Mr. Huggins, the orders that ought to have been given at Orangeburg,—the copies there are in pursuance of this rule which governs meeting points?

A. That order you showed me?

Q. Yes.

A. That was a meet order at that point which you showed me.

Q. And rule number 208 in this rule book is the rule governing that?

A. Yes, sir.

Q. That is the rule controlling that?

A. Yes, sir, the superior train should have gotten the order and it been acknowledged by the disptacher before the inferior train received it.

Q. Now, Mr. Huggins, what is the first rule in the operation of trains?

A. The first general rule, you mean?

Q. Yes,—outside of the book?

A. The first general rule is to be on the safe side and to run no risk.

Q. Then after all other business you have to use common sense?

A. Yes, sir, that is worth as much as the rule book.

Q. A train order must not be sent to a superior train at [fol. 90] the meeting point if it can be avoided,—that is a rule of the Company, I believe?

A. Yes, sir.

Q. When an order is so sent, special precaution will be observed to show safety?

A. Yes, sir.

Q. Therefore, the rules and practices require that an order of that kind be made a five copy order?

A. Yes, sir.

Q. And when the extra 483 reached Orangeburg there should have been two copies of the order for the conductor and engineer?

A. Yes, sir, to have made it safe.

Q. And the red board should have been held on them until the two orders were given?

A. Yes, sir.

Q. And a clearance card?

A. Yes, sir, that is the only thing to do.

Q. Now, tell us on the part of the railroad, whether it was a violation of the rules and of good railroading to have dropped that board?

A. They know where trains are, and they are best fitted to know when an order has been superseded or fulfilled or annulled.

Q. The dispatcher in Charleston and the operator in Orangeburg knew where the trains were?

A. Yes, sir.

Q. And the crew of extra 483 did not know?

A. They only knew where they were.

Q. They did not know about the location of other trains up and down the line?

A. Oh, no.

Q. But that crew could only do what they were told to do by the dispatcher and operator?

A. Yes, sir.

Q. And they were bound to obey their orders, were they not?

A. Yes, sir, they were.

Q. Now, Mr. Huggins, the rules say that train orders ought to be written clear and plain and brief?

A. Yes, sir.

[fol. 91] Q. Tell us whether or not that order complies with that rule?

A. As I said before this order and the real order is not alike.

Q. Tell us whether or not that is not a combination meet order and running order?

A. Yes, sir, and as I said before this order is backwards to start with. He was given a meeting point before he was made a train.

Q. Read it.

A. It says Extra 723 east gets this order and meet extra 483 west at Orangeburg, and engine 483 run extra Branchville to Andrews.

Q. That is the order?

A. Yes, sir.

Q. He had a meet order before he was made a train?

A. Yes, sir.

Q. Then it is confusing?

A. It is backwards, that is all. If it had been the other way it would have been clearer.

Q. Look at this order (indicating to the witness), and tell us if that is correct in respect to direction?

A. No, sir, this is the same thing as the other one there, but it is backwards.

Q. It gives the direction wrong?

A. Yes, sir.

Q. Extra 483 was moving west?
A. Yes, sir.
Q. And he has him down as moving east?
A. Yes, sir.
Q. That is a mistake?
A. Yes, sir.
Q. Which way was he going?
A. He was going west, but that order there says he is going east.

Mr. Wolfe: In order to have the record straight, I am referring, Mr. Stenographer, to the Youngblood order.

Mr. Wolfe (continuing):

Q. Now, I want to ask your opinion on this as a man experienced in railroading,—if you had been serving as con-
[fol. 92] ductor and engineer of the crew of extra train 483, and approached the semaphore board, and it had been dropped on you,—although you had copies of this order in your pocket, and the semaphore board had been dropped, and no train orders given you, and no clearance card given you, and you had run on by the semaphore board, and the weather was very foggy, and you passed a train in the east end of the pass track, and as you went in that train gave two blasts, which would indicate a lookout for the switch ahead, and you proceeded on down and found that switch turned red,—tell us whether or not you would have concluded you had a clear track, and that the extra 723 had come in?

A. That would have been an absolute confirmation to me. It would have confirmed the fact that the track was clear. If the other man blew me ahead any engineer or conductor would have been obliged to have known that that track must be clear, and it was known to the operator and the dispatcher, and then going on and finding the track clear, and getting a signal from another train there to go ahead, I would have considered the track absolutely clear.
Q. Any engineer would have done like Mr. Dantzler?
A. That is exactly what I would have done.

Cross-examination.

By Mr. Blatt:

Q. For the past eighteen years, Mr. Huggins, you have not been employed by a railroad company?

A. No, sir, I have not.

Q. Neither have you been a dispatcher nor an operator for a railroad?

A. I have not.

Q. You agree with the rule book that extra trains are run by written train orders?

A. Yes, sir.

Q. Do you ag-ee with the rule book that the only way a written order can be superseded or annulled or fulfilled [fol. 93] is unless another written train order has been given?

A. Yes, sir, I agree with that.

Q. Do you know in this case whether or not another written train order was given to conductor Youngblood and engineer Dantzler?

A. According to that book,——

Q. According to the dispatcher's book,—answer me yes or no?

A. No, sir.

Q. It was their duty to fulfill the written order that they had unless another written order was given them annulling or superseding the order that they had?

A. No, sir, with a clear board.

Q. Then your idea is that upon reaching the station with a written order in your possession that has not been annulled, superseded or fulfilled,—that if upon approaching a station a clear board is given, that you have a right to proceed?

A. Yes, sir.

Q. That is what you want to tell this jury?

A. That is what I say.

Q. That under those circumstances they have a right to proceed?

A. Yes, sir.

Q. Where?

A. Where the order says.

Q. In this case where?

A. On to Andrews.

Q. You base your conclusions on the rules of the Company?

A. Yes, sir.

Q. State where that rule is that gives you that right.

A. That semaphore board there is what covers it.

Q. Read the rule that says that when that clear board is given that they have a right to go to the final point designated in their order?

A. That block gives it to them.

Q. Does that semaphore say that they have a right to go to Andrews when it is dropped?

A. That gives him a right to go under the order to his distination.

Q. There is nothing in the book giving him the right to [fol. 94] go to Andrews?

A. Yes, sir.

Q. Where?

A. Upon getting the clear board he had a right.

Q. Wouldn't you have found whether extra train number 723 had come in?

A. Not with the indications as bright as they were.

Q. Although they could not see on account of this fog which has been mentioned here,—you, with the dropping of the semaphore board, would have gone on?

A. That semaphore board controls the train.

Q. That semaphore board told the world that extra 723 had arrived?

A. I don't say about the world. The rule is there in the book for you to see.

Q. Then you say the dropping of the semaphore board told the engineer that he had a right to proceed?

A. Yes, sir.

Q. Irrespective of his meet order at Orangeburg?

A. Yes, sir.

Q. Now, take the dispatcher's book and turn to the order in this case (handing witness the book)?

A. Yes, sir.

Q. That order on this page is plain and clear?

A. No, sir, I said it was backwards.

Q. Then you as a careful engineer would not have driven your train under that order?

A. Oh, yes,—they are put out. It has all the necessaries in it. It is just backwards.

Q. The intention of the dispatcher in there was clear to you?

A. Yes, sir, it is clear.

Q. They were to meet extra 723 at Orangeburg?

A. Yes, sir.

Q. And then go to Andrews?

A. Yes, sir.

Q. Mr. Dantzler had that information then at Branchville?

A. Yes, sir.

[fol. 95] Q. In that order handed to him at Branchville—it notified him that he was to meet extra 723 at Orangeburg—did that order notify him that?

A. Yes, sir.

Q. Did it also notify him that after he had met extra 723 at Orangeburg, he was to go to Andrews?

A. That block board gave him that.

Q. When he left Branchville, did that order you read notify Captain Dantzler he was to meet extra 723 at Orangeburg?

A. If no other condition had come in.

Q. Did that order notify him that he was to meet extra 723 at Orangeburg?

A. Yes, sir, with no other conditions.

Q. Then it notified him that he was to go to Andrews?

A. I don't see where it says after he met him there. I don't see that.

Q. I asked you didn't that order say that he was to meet extra 723 at Orangeburg and run extra to Andrews?

A. If no other condition existed.

Q. Does that order say that?

A. The conditions say that.

Q. That order notified him to meet number 723 at Orangeburg?

A. If he had no further instructions.

Q. Is that in the order?

A. The clear board was.

Q. Did that order tell him anything else but that he was to meet extra 723 at Orangeburg?

A. The order itself says——

Mr. Brown: The order is plain and I object to it. The order is in writing and is there for the Court and the jury.

The Court: The order is written, yes, sir.

Mr. Blatt: I want to know from the witness if he was operating a train under this order if it would not notify him

[fol. 96] that he was to meet extra train number 723 at Orangeburg, and then run extra to Andrews.

Witness: And I said not with the conditions that existed.

Mr. Blatt (continuing):

Q. I want to know if this order does not show on its face that plaintiff's intestate was to meet extra train number 723 at Orangeburg, and run extra from Branchville to Andrews yard?

A. That is as far as it goes, but it goes only to the board at Orangeburg. You see the order and you can tell that.

Q. That is all the order says?

A. That is all that is on there at the present time.

Q. There is nothing on the order indicating to the engineer and conductor that they were to receive further orders at Orangeburg?

A. He received further orders when he got a clear board.

Q. There was nothing on the order to indicate that he was to receive another written order at Orangeburg?

A. Not another written one, no, sir.

Q. The extra trains are run on written train orders?

A. Yes, sir.

Q. Now, if an order is misleading or not plain, it is the duty of the conductor or the engineer to inquire as to its correctness?

A. I didn't say that.

Q. But that is true?

A. They cannot correct a dispatcher or attempt to as he would lose his job.

Q. It is his duty to inquire for a proper order, if the one that he has is not plain on its face—that is the duty of a good engineer to make some inquiry about that order?

A. I have no doubt but what he did.

Q. Is it not the duty of a good engineer when he receives an order that is improper or incorrect on its face to inquire as to the order?

[fol. 97] A. Yes, sir, and they generally do it.

Q. Then you would not let your train travel on an order that is imperfect, would you, Mr. Huggins?

A. I said the order was back-ards.

Q. Would you have driven your train on that order?

A. Certainly, and any man of common sense could.

Q. Captain Dantzler had good sense on this occasion?

A. He displayed excellent judgment, I think.

Q. When he got to Orangeburg, and that semaphore board is dropped—does it indicate that he had a clear block ahead of him or what?

A. Yes, sir.

Q. Tell us whether or not Orangeburg is operated under the block system?

A. It is operated under train orders, and a man cannot pass one of the signals when it is red.

Q. Do you know whether or not they have the block system in operation at Orangeburg?

A. Yes, sir, I have seen it on both sides.

Q. What do you call a block?

A. The two semaphore boards.

Q. Do they have a block system in Orangeburg?

A. I say that you have a fixed signal there.

Q. I asked you about a block system?

A. That has nothing to do with a train order. They have the board there to control a block system if they want to use it. That is up to them to use it if they want to.

Q. Do they have the block system at Orangeburg—you can answer that question?

A. Yes, sir.

Q. You know what a block system is?

A. Yes, sir, but this is a signal block, but you have the control there that you would have with four hundred blocks.

Q. You say that they have the signal block system in Orangeburg?

A. I don't know what you call it.

[fol. 98] Q. State whether or not they have a block system at Orangeburg?

A. You have a train order board at Orangeburg, and you call it as you like. It is a fixed signal for the government of trains, and if it is properly used they cannot get by it.

Q. Do you call it a block system?

A. It makes no difference what I call it.

Q. You say that this is a dangerous situation at Orangeburg?

A. Yes, sir, I do.

Q. A passing track for nearly a mile for trains to wait on for another train to come is dangerous?

A. Yes, sir, if it had properly been situated it would not be, but as it is now it is dangerous.

Q. If Captain Dantzler had driven his train into this dangerous side track, as you call it, he would not have had an accident with 723?

A. I said the situation was dangerous.

Q. As dangerous as the situation is—if Captain Dantzler had driven extra 483 into the side track and waited for extra train 723 to come, there would not have been an accident?

A. If the side track had been where it should have been there would not have been an accident possibly.

Q. If he had waited in there, the accident would not have happened?

A. He would have had to have lapped over.

Q. I didn't ask you that.

A. If he had been lucky enough to get in there safe it would have been alright, but he could not have gotten in there.

Q. He could not have gotten in there safe?

A. No, sir.

Redirect examination.

By Mr. Wolfe:

Q. My friend has asked you about the block system,—in [fol. 99] railroading the track between two train boards is known as the block?

A. Yes, sir.

Q. And this is a single track block system?

A. Yes, sir.

Q. And up around Charlotte and Spartanburg that is another system?

A. Yes, sir, that is an electric system.

Q. And these things in the rule book have nothing to do with that?

A. Not a thing in the world.

Q. The clearance card given by Mr. Von Lehe at Branchville says that the block is O. K.?

A. Yes, sir, that was given in addition to the order. It should have been given also at Orangeburg.

Q. And it was not?

A. No, sir.

Q. And that in your judgment is what caused the trouble?
A. Absolutely nothing else.
Q. The operator at Branchville uses the block?
A. Yes, sir.
Q. And he should have had the clearance card and two copies of the order at Orangeburg?
A. Yes, sir, they should have given him that.

G. K. FICKLING, a witness for the plaintiff, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I live in Blackville, and until recently I was a locomotive fireman, and had stood part of the examination as an engineer, but never had acted on an engine by myself. I had three or four years of service, and worked on the Southern Railway, Columbia Division.

Q. You know what a thirty-one order is?
A. Yes, sir, I think so.
Q. A thirty-one train order?
A. Yes, sir.
[fol. 100] Q. When there is a meet order or pass order out, Mr. Fickling, and the engine approaches the meeting point, the semaphore board stands out with the arms in this position—that is the normal position?
A. Yes, sir.
Q. Both sides are red?
A. Yes, sir, it is red always. If it is a question, and you have to get a clearance card to pass, then you have to get one, and it stands out, and if you don't have to get a clearance card the board must be given white before the train can pass.
Q. Orangeburg has a semaphore board?
A. Yes, sir.
Q. And a day and night office there?
A. Yes, sir.
Q. Now, when a train approaches that semaphore what must the engineer do?

A. If he finds a red board he gives four blasts of the whistle, which asks for an order to pass, and that would be a white board.

Q. To pass he would be given a white board?

A. Yes, sir.

Q. It is white when it drops?

A. Yes, sir.

Q. Now, I believe the engineer acknowledges that signal?

A. When it is dropped, yes, sir.

Q. How does he answer that?

A. He answers it with two blasts of the whistle.

Q. When the board drops that way (indicating to the witness), what is the sign of that?

A. I think that I am familiar with the rule book, but I cannot point them out to you now. I will have to see the book and find the rule.

Q. You were required to have a rule book?

A. Yes, sir, I was.

Q. And you worked for the Company between three and four years, you stated?

A. Yes, sir.

Q. When the four blasts of the whistle were given, and the board drops, and drops from red to white—what is the indication?

[fol. 101] A. To proceed.

Q. What is the name of that when it is dropped?

A. They call it a clear board.

Q. That means what?

A. Proceed on the orders that you have.

Q. Now, you know what a meet order or middle order is?

A. Yes, sir.

Q. A number thirty-one order is sent out in five copies?

A. Yes, sir.

Q. One copy for the files, and two copies for each of the trains that are going to pass?

A. Yes, sir.

Q. Then should that board be dropped and no copies of the order given to the train as it approaches?

A. No, sir.

Q. Why?

A. A thirty-one order requires the signature of the trainmen, and it must be kept red—that is, the board is kept red, and you have to stop and sign for it.

Q. That board is kept red until the conductor furnishes his signature?

A. Yes, sir.

Q. But when the board is dropped the indication is what?

A. That they have no order for them.

Q. Then he should follow his previous running orders?

A. Yes, sir, that is my judgment.

Q. You know the location of the track at Orangeburg?

A. I have seen them.

Q. The passing track does not run on both sides of the semaphore board?

A. No, sir.

Q. It is on the west side of the station?

A. Below the station, west, yes, sir.

Q. How far?

A. About one hundred and fifty feet, I would say.

Q. Then it extends for nearly a mile up towards Columbia?

A. The passing track?

Q. Yes.

A. Yes, sir, something like that.

[fol. 102] Q. Now, with a pass track located or fixed like that—not on both sides of the semaphore board, but starting at one hundred and fifty feet on the other side of the semaphore or station—state whether or not in your opinion that is a safe place to handle trains?

A. I would not think it was safe if you had a meet order with another train and to go back in his territory.

Q. You have examined at Orangeburg the tracks and conditions there?

A. Yes, sir.

Q. In order to effect a passing there, a train going from Charleston and going west, has to pass the station to get into the passing track?

A. Yes, sir.

Q. And then he goes into the other man's territory?

A. Yes, sir, if he has a meet order he has to pass beyond this board into the other man's territory.

Q. Now, speaking in railroad terms or parlance—that semaphore board is Orangeburg?

A. Yes, sir, that is the limit that any train would have coming in to Orangeburg.

Q. When you pass that either way you have gone by the station of Orangeburg?

A. Yes, sir, as far as train orders are concerned because they have passed that board.

Q. Now, a train going up from Branchville and going west by there—he would have to pass that semaphore?

A. Yes, sir.

Q. There is only one track in front of the station there?

A. Yes, sir.

Q. In order to pass another train, or go by and get in the pass track—you would have to go by the semaphore board?

A. Yes, sir.

Q. Is that a safe arrangement, in your opinion?

A. No, sir, not in my opinion it would not be.

[fol. 103] Cross-examination.

By Mr. Blatt:

Q. All extra trains are operated under train orders?

A. Yes, sir.

Q. The only way that extra 483 could have been operated was by train order?

A. Yes, sir.

Q. The only way it could have been operated was by a written train order?

A. Yes, sir.

Q. And any men who have been in the railroad business as long as these men have to stand examination upon the rules that we have mentioned?

A. Yes, sir.

Q. And those rules provide that the only way an extra train can be operated is by a written train order?

A. Yes, sir.

Q. A verbal order would have no effect?

A. No, sir.

Q. It makes no difference who would give them, a verbal order itself is not binding?

A. No, sir, if they had a written train order their duty was to comply with it.

Q. If Captain Youngblood left Branchville with this train order in writing—he was to meet extra 723 at Orangeburg?

A. Yes, sir.

Q. Not having received another train order superseding or annulling that order, was it not his duty to go into the siding at Orangeburg and wait on extra 723?

A. Yes, sir.

Q. I will ask you again—if conductor Youngblood left Branchville with an extra train known as extra number 483, with a written order in his pocket advising him to meet another extra train at Orangeburg, and not having received in the meantime another written order superseding or annulling the order he had, if he passed on by the station at Orangeburg, would you say that he complied with his written order?

[fol. 104] A. If nothing else conflicted with it he should have met him there.

Q. The only way to operate an extra train is by a written train order?

A. Yes, sir.

Q. If he had no other train order in writing he should have been there?

A. Yes, sir.

Q. On approaching Orangeburg—you would give four blasts of the whistle?

A. Yes, sir.

Q. The operator on duty answered by holding the semaphore or letting it drop?

A. Yes, sir.

Q. It has been testified to that extra 723 was a superior train, and extra 483 was an inferior train—which one would go into the siding?

A. The inferior train.

Q. If Captain Youngblood had in his possession a written train order, directing that he should meet a superior train at Orangeburg, wasn't it his duty upon reaching Orangeburg to go into a siding and wait on extra 723?

A. If he could find one to get in, yes, sir.

Q. And there was one there a mile long?

A. Yes, sir.

Q. When the semaphore board is dropped, that is an indication that the station had no further train order?

A. Yes, sir.

Q. And that the conductor and the engineer should comply with the order that they had?

A. Yes, sir.

Redirect examination.

By Mr. Brown:

Q. If you were in Youngblood's place, with Dantzler running a train from Branchville to Fort Motte, and if a thirty-one, five copy order had been issued to direct the operation of your train, and the operation of train 723 in the opposite direction, directing you to run to Fort Motte, but in the meantime to meet number 723 at Orangeburg, and if as you approached the station at Orangeburg, you, by four blasts of the whistle, called for the orders that ought to [fol. 105] have been there for you, and if the operator failed and refused to give you those orders, but on the contrary gave you the white board, which indicates clear signal or clear track, and if by reason of another train standing there in the side track, you had reason to believe that the meet order had been fulfilled—what would you have done if you had been in Youngblood's place, with a white board and a high ball sign given to you?

A. That would not be any proof, but it would be an indication that the train was there and to go on and clear. There is not a rule that gives you a right to pass there without seeing the number on the engine, but that is done a lot of times if an engine is seen in the side track.

Q. And if the operator signals you that the track was clear, what would you do?

A. I would think it was clear, but it would depend on what kind of order the other fellow had. You would no doubt believe that that was the 723 engine in the track, and that they were giving you the white board to proceed.

Q. In railroad circles, if they had held that red board on Youngblood he would have been there until yet unless he got additional orders?

A. He would have to stay there, but when that board dropped this way (indicating to counsel) it had no effect on him, and he could pass on by.

Recross-examination.

By Mr. Blatt:

Q. Under the reasoning Mr. Brown has given you, you say a man would have a right to presume that that engine on the siding was number 723?

A. Yes, sir, they could have stopped and found out, and it is against the rules, but they lots of times seen an engine in there and go on.

[fol. 106] Redirect examination.

By Mr. Brown:

Q. There was a fog so thick you could not see anything,—who was at fault,—if they were going to direct Youngblood to pass that semaphore board when it was red,—they would have had to have given him a clearance card?

A. Yes, sir, they would have had to have given him an order to come by, or he would have been there until yet.

Q. They had to give him the clear board and let him by, or he would have been there until yet?

A. Yes, sir.

R. L. Rogers was recalled as a witness for the plaintiff and testified as follows:

Direct examination.

By Mr. Wolfe:

Q. Mr. Rogers, referring to your testimony this morning about what you told the operator at Orangeburg in reference to the 483, when it approached there,—you stated, I believe, that you told the operator to clear 483, and gave some verbal instructions?

A. Yes, sir.

Q. Tell whether or not your instructions to the operator at Orangeburg was to clear the extra 483, and go to the west end of the pass track and wait for the 723 at 9:40?

A. That has been a long time ago, that is my best recollection, and that seems to be the evidence submitted at the Columbia hearing.

Q. That was about 9:25?

A. It was 9:23 because the train sheet shows that he arrived at 9:25.

Q. Extra 483 arrived at 9:25?

A. Yes, sir.

Q. It reached Orangeburg at that time?

A. That is what the train sheet shows, yes, sir.

[fol. 107] Plaintiff rests.

TESTIMONY ON BEHALF OF THE DEFENDANTS

Mr. Harley: Now, if the Court please, it is admitted that the two train orders which have been offered in evidence, together with the clearance card, were the two orders found in the possession of,—one in the possession of Captain Youngblood, and one in the possession of Mr. Dantzler, and that they were in their possession at the time of their death. I refer to the two copies on which the train was being operated, and that the order found was signed for by Captain Youngblood, the conductor, and a copy thereof delivered to Engineer Dantzler. Further, that Captain Youngblood and Captain Dantzler had signed for, and had in their possession, each a copy of the rule book of the Southern Railway Company in effect at that time.

Mr. Harley: I understand that the time table has been offered in evidence by the plaintiff?

Stenographer: It was offered in evidence by the plaintiff, and is marked as Exhibit number eight,—Dantzler case.

Mr. Blatt: I offer in evidence two receipts for the rule book of the Company signed by Captain Youngblood, and Mr. L. K. Dantzler, the engineer.

H. W. VON LEHE, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

On January 3rd, 1924, I was first trick operator for the Southern Railway Company at Branchville. I had held [fol. 108] that position about seven years. I now work in Washington for the Southern Railway. The office at Branchville is an all night office and was at that time. Three operators worked there eight hours each. I went on duty at eight in the morning and worked until four P. M. I succeeded Mr. Dawson.

Q. This extra train was organized on this morning in question at Branchville?

A. Yes, sir.

Q. For what purpose?

A. To go for number 783 at Fort Motte.

Q. Was that also a west bound train?

A. Yes, sir?

Q. It was disabled?

A. Yes, sir.

Q. And the train 483 was ordered out to relieve that disabled engine at Fort Motte?

A. That was the purpose, yes, sir.

Q. You always call out the extra crew at Branchville?

A. Mr. Dawson called out this one before I came on duty that morning.

Q. And after the crew was called you received an order?

A. Yes, sir, at 8:01 A. M.

Q. That order was known as order number eighteen?

A. Yes, sir.

Q. And it read as follows: Extra 723 gets this order and meet extra 483 at Orangeburg. Extra 483 run extra Branchville to Andrews?

A. Yes, sir, that was the order.

Q. You copied it down?

A. Yes, sir.

Q. As the operator on duty at Branchville?

A. Yes, sir.

Q. And delivered it to whom?

A. Conductor Youngblood.

Q. He signed for it?

A. Yes, sir, he did.

Q. This is the order (handing order to the witness)?

[fol. 109] A. Yes, sir, that is it.

Q. That is the one you delivered to Conductor Youngblood on the morning he was ordered out at Branchville?

A. Yes, sir.

Q. Attached at the bottom of that is what?

A. A clearance card, Form 603.

Q. That is Mr. Youngblood's signature to the clearance card, is it not?

A. Yes, sir.

Q. You delivered that to him at what time?

A. At 8:31 A. M.

Q. And under the rules of the Company, the conductor delivered the other copy to the engineer?

A. He does.

Q. Mr. Dantzler was the engineer of this train?

A. Yes, sir.

Q. What time did that train leave?

A. About 8:35.

Q. Those trains run only on train orders?

A. Yes, sir.

Q. That is the extra trains like this one?

A. That is correct.

Q. They run on written train orders?

A. Yes, sir.

Q. And the difference between a thirty-one order and a nineteen order is that the conductor signs for a thirty-one (31) order as he did here?

A. Yes, sir.

Q. Is there anything on that order which you delivered to Conductor Youngblood, and a copy of which was delivered by him to Engineer Dantzler,—was there anything on there to indicate that either of those gentlemen were to receive any further order at Orangeburg?

A. No, sir.

Q. The abbreviation for Branchville is B. V.?

A. Yes, sir.

[fol. 110] Q. That order was addressed to B. V.?

A. Yes, sir.

Q. And that meant that it was to go to your office ond be delivered to the conductor?

A. Yes, sir.

Q. And J. D. is Orangeburg?

A. Yes, sir.

Q. Is there a block system at Branchville?

A. No, sir.

Q. And is there one at Orangeburg?

A. No, sir.

Q. You have the semaphore at Branchville?

A. No, sir, not there.

Q. There was one, however, at Orangeburg?

A. Yes, sir, Orangeburg has one.

Cross-examination.

By Mr. Wolfe:

Q. The reason you had no semaphore at Branchville is because Branchville is a junction point?

A. Yes, sir.

Q. And all trains stop there anyhow?

A. Yes, sir.

Q. And there would be no necessity for one?

A. Not at Branchville, no, sir.

Q. An engineer and conductor stand their examinations to show their familiarity with the rules?

A. Yes, sir.

Q. That order that you had them sign for at Branchville was a five copy order?

A. No, sir, three copies.

Q. At Branchville it was three coipes then?

A. Yes, sir.

Q. The one at Orangeburg was a five copy order?

A. Yes, sir.

Q. There would not be anything on the order that they received at Branchville to show that they were to receive other copies at Orangeburg?

A. No, sir.

Q. And under the rules when they got to Orangeburg [fol. 111] there ought to be five copies there?

A. Of a thirty-one order, yes, sir.

Q. And the one at Orangeburg was a thirty-one?

A. Yes, sir.

Q. One copy for the office files?

A. Yes, sir.

Q. And two copies should be given to the first train that arrived?

A. Yes, sir.

Q. And two for the next train?

A. Yes, sir.

Q. There was nothing to indicate on the order that you gave them that they were to receive nay copies or clearance card either at Orangeburg?

A. No, sir.

Q. But that was due under the rules?

A. Yes, sir.

C. E. CANADY, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

In January, 1924, I was conductor for the Southern Railway Company of extra train 683. That was a west bound train. It originated at Charleston and was going to Andrews yard just on this side of Columbia. That train became disabled at Fort Motte, which is between St. Matthews and Columbia.

Q. This engine number 483 from Branchville, was sent there to help you out?

A. Yes, sir.

Q. Captain, what did that train number 683 consist of?

A. Forty-eight cars.

Q. How many were interstate,—that is to say, going out of the State of South Carolina?

A. Twenty-four cars.

Q. Where did those twenty-four car orginate?

A. Charleston.

Q. You have the record with you showing the contents of the train?

A. Yes, sir.

[fol. 112] Q. Where were some of the cars going that were in your train number 683?

A. I had cars going to Chattanooga, Tenn., Memphis, Tenn., Nashville, Tenn., and to points in Arkansas.

Q. And other points outside of the State of South Carolina?

A. Yes, sir.

Q. They originated in Charleston?

A. Yes, sir.

Q. Did those cars all have merchandise in them?

A. Yes, sir.

Mr. Harley: I offer that book in evidence showing the contents of the cars. I see, however, that we have a copy of it, and instead of the book, we will offer a copy of the consist of the train.

(No cross-examination.)

C. B. Ergle, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

On January 3rd, 1924, I was yard clerk for the Southern Railway Company at Andrews yard, Columbia, South Carolina. I have with me the consist of extra train number 723. That was an east bound train traveling from Andrews yard to Charleston. That train consisted of seventy-one cars.

Q. Can you tell us from your records how many of those cars came from without the State of South Carolina?

A. Yes, sir, twenty-two cars were interstate, and forty-nine cars were intra-state.

Q. The interstate cars,—were they loaded with merchandise and other articles?

A. Yes, sir, merchandise and other freights.

Q. Those cars moving without the State into Charles-
[fol. 113] ton,—what was the points they were coming from?

A. Various points.

Q. Name some of them for the purposes of this record.

A. I had —, Southern car, from Spencer, N. Car.

Q. Where was it going?

A. To Charleston.

Q. Any others?

A. Yes, sir, I had a New Haven car going to Charleston.

Q. What was that loaded with?

A. Automobiles.

Q. What else?

A. Also one from Chattanooga, Tenn., going to Charleston, and it was loaded with cement.

Q. Those cars were being carried by extra 723?

A. Yes, sir.

(No cross-examination.)

B. C. Workman, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

I am employed by the Southern Railway, and was a brakeman on the train known as extra 723 on January 3,

1924. That train originated at Andrews Yard. The crew of that train consisted of Captain Ulrich, the conductor, Engineer Brown, Oliver Hopkins, the fireman, and E. H. Neale, the flagman, and myself. It had seventy-two cars with the caboose.

Q. What time did that train reach St. Matthews?
A. Around 8:15 in the morning.
Q. Do you remember something of the wreck?
A. Very little.
Q. What happened to you and the crew?
A. We hit.
Q. Hit what?
A. Hit this train 483.
Q. Where were you at the time?
A. Sitting on the fireman's seat box.
[fol. 114] Q. Did you get hurt?
A. Yes, sir, broke my shoulder.
Q. How did you get out?
A. Came out on my head.
Q. What became of the conductor?
A. I don't know.
Q. What became of the engineer?
A. I don't know.
Q. You know that they were killed?
A. Yes, sir, I heard afterwards.
Q. Was the fireman killed?
A. I heard so.
Q. Was Neale hurt?
A. No, sir, he was not.
Q. Who was on the train with you?
A. The conductor and the engineer and the fireman and myself.
Q. Who was on the caboose?
A. The flagman, Mr. Neale.
Q. This train reached St. Matthews at 8:15 A. M.?
A. Yes, sir.
Q. Did you do any shifting there?
A. We had to pick up and set off some.
Q. What time did the operator there at St. Matthews go on duty in the morning?
A. At eight o'clock I think.
Q. Was he there?
A. The board was down.

Q. If he had been on duty it would have been up?
A. Yes, sir.
Q. You have heard this order number eighteen read here, if your train had been delivered at St. Matthews a copy of the order,—state whether or not it would have affected the movement of that train at all?
A. No, sir, not a bit.
Q. You would have gone on to Orangeburg if a copy of the order had been delivered to you?
A. Yes, sir.
Q. You would have gone on anyway?
A. Yes, sir.
Q. As you were supposed to do?
A. Yes, sir.
[fol. 115] Q. And it would not have made any difference with your train?
A. No, sir.
Q. And in five or six miles you came on to Orangeburg or towards Orangeburg and ran into this train?
A. No, sir, we stopped at Riley and let number twelve go by, and then we came on down.
Q. How far is that from St. Matthews?
A. Three miles.
Q. On the Charleston side?
A. Yes, sir.
Q. And towards Orangeburg?
A. That's right.

Question by Mr. Brown:

Q. Where did you come from?
A. Come from Charleston.

Cross-examination.

By Mr. Wolfe:

Q. In the train number 723, there were some Orangeburg cars, were they not?
A. I think so. They had some cars, but I don't know what was in them or anything about that.
Q. Would you like to say how many?
A. Two or three, but I don't know how many.

Q. If the collision had not occurred, you would have come on to Orangeburg and cut them out?

A. Yes, sir, we were coming.

Q. The extra 723, which you were on, was a through freight?

A. Yes, sir.

Q. Going from Columbia to Charleston?

A. Yes, sir.

Q. Practically all through freights carry freight to Orangeburg, however?

A. Yes, sir.

Q. And when you arrived at Orangeburg you would have had to have stopped and cut out the cars for Orangeburg?

A. Yes, sir, I know we would.

Q. But you did not get that far?

A. No, sir.

[fol. 116] E. G. KITTLES, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

I am a civil engineer for the Southern Railway Company, and have been working for them for about twelve years. Upon the request of the Legal Department I made a survey and also prepared a blue print showing the surrounding at Orangeburg and also at Stilton.

Q. For the purpose of getting in the record certain measurements, I will ask you certain questions, which side is this (indicating to the witness on diagram)?

A. That is the Charleston end.

Q. That is the Columbia side then?

A. Yes, sir.

Q. And also towards St. Matthews?

A. Yes, sir.

Q. And Stilton is between Orangeburg and St. Matthews?

A. Yes, sir.

Q. Here is the depot at Orangeburg?

A. Yes, sir.

Q. And this is the semaphore board?

A. Yes, sir.

Q. That semaphore is located right there at the depot?
A. Yes, sir.
Q. That is Russell Street?
A. Yes, sir.
Q. That Street crosses on the Charleston side of the passenger depot at Orangeburg?
A. Yes, sir.
Q. It runs up into the City of Orangeburg?
A. Yes, sir.
Q. Where does the pass track begin?
A. Right in here. You can see it on there.
Q. How far is from—how far is that pass track from the semaphore board where operator Tyson was?
A. It is 232 feet or 77 yards.
Q. That is on the west side of the depot?
A. Yes, sir.
Q. Or on the Columbia side?
A. That is correct.
[fol. 117] Q. How far does that pass track extend?
A. From end to end is 4172 feet long.
Q. What portion of a mile is that?
A. About four-fifths of a mile.
Q. Parallel with the passing track what other tracks are there at Orangeburg?
A. West of the passenger depot is the freight depot about eight hundred feet away, and there are warehouses in there and side tracks and spurs.
Q. On the east end of the depot what measurement have you got on here?
A. That includes all spur tracks and sidings.
Q. That is towards Charleston?
A. Yes, sir.
Q. Where is that packing house track?
A. Down here. It goes off in here, as you will see from the diagram (indicating to counsel).
Q. How far is that packing house spur track from the depot and the semaphore board?
A. It is 4174 feet.
Q. That is nearly a mile?
A. About 85-100.
Q. How far is the semaphore board and the passenger depot from the place of the accident?

A. It is 13,420 feet, a little over two and a half miles.

Q. How far is it from the west end of the passing track to the point of the accident?

A. That is 9016 feet.

Q. What part of a mile is that?

A. That is 1 71-100 of a mile.

Q. State whether or not, Mr. Kittles, from the west end of the passing track at Orangeburg to the place of the accident—state whether or not the track is straight?

A. Absolutely straight.

Q. State whether or not from the semaphore board to the place of accident it is straight?

A. No, sir, there is a curve in there opposite the freight depot. It is about fifteen hundred feet long on the curve in [fol. 118] there, and from that point to the point of the accident is straight and runs for six and 8-10 miles from the point of the accident as straight as can be.

Q. It is a straight track there through Stilton at the place of the accident?

A. Yes, sir, absolutely.

Cross-examination.

By Mr. Wolfe:

Q. That little circle represents the operator's office in the depot there?

A. Yes, sir, the bay window.

Q. The semaphore board is right there?

A. Yes, sir.

Q. And the operator works that?

A. Yes, sir, he operates the semaphore.

Q. Looking that way, (indicating to witness), the operator can see trains approaching from the Charleston side?

A. Yes, sir.

Q. And looking this way he can see trains from the Columbia side until obscured by the curve?

A. Yes, sir.

Q. Now, the passing track is here (indicating to witness)?

A. Yes, sir.

Q. And that little spur at the packing house plant that you have mentioned is down here?

A. Yes, sir.

Q. Then he would have to come on by here, and go by the station to get into the passing track?

A. Yes, sir.

Q. He would have to pass the semaphore board to get in that passing track?

A. Yes, sir, coming from Charleston.

Q. And that was the way that 483 was coming from?

A. I understand so. I don't know.

Q. That passing track commenced here and extended all of the way down to this point here?

A. Yes, sir.

Q. That is the west end?

A. Yes, sir.

Q. This is the freight depot over here?

A. Yes, sir.

[fol. 119] Q. How far is it from the freight depot to the east end of the passing track at the clearance?

A. About five hundred feet.

Q. There is a curve along in here?

A. Yes, sir, it begins about the clearance of this track here, and goes on around to this point (indicating on map).

Q. From the clearance of the east end of the passing track and on the passenger depot, and across Russell Street, and for some distance down, there is only one track?

A. Yes, sir, there is only one track down to this point here (indicating to counsel).

Redirect examination.

By Mr. Harley:

Q. We have been talking about Orangeburg on this other map—now this is a map of Stilton?

A. Yes, sir.

Q. Where did the wreck occur?

A. At that double arrow point.

Q. Where is the station at Stilton?

A. It is a waiting shed, and is here (indicating).

Q. Where is your pass track?

A. Right here.

Q. How long is that?

A. It is 2122 feet long.

Q. It has what capacity?
A. Thirty-eight cars in the clear.
Q. That is at Stilton?
A. Yes, sir.
Q. How far is it from the depot to the place of accident here on the west end?
A. About 4000 feet.
Q. Nearly a mile then?
A. About four-fifths of a mile I would say.

Recross-examination.

By Mr. Wolfe:

Q. That is a passing track at Stilton?
A. Yes, sir.
Q. And that will accom-odate thirty-eight cars you say?
A. Yes, sir.
Q. I notice that you use the initials Southern Railway. [fol. 120] Company, L. C. and C. R. R.?
A. Yes, sir.
Q. What does that stand for?
A. That is the original line before the Southern got it.
Q. That ought to be S. C. and G. Railroad?
A. No, sir, that is what we call it by.

Mr. Harley: We offer in evidence the two maps in question which the witness has just testified from.

J. B. Witherspoon, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

Q. You are employed at present by the Southern Railway Company?
A. Yes, sir.
Q. What position do you hold with that Company?
A. At the present?
Q. Yes.
A. Locomotive Engineer.

Q. You were on this engine 483?

A. Yes, sir.

Q. You were the fireman?

A. Yes, sir.

Q. When were you called out at Branchville to go to work?

A. When?

Q. Yes—on the morning in question, what time were you called out to go to work?

A. Between seven and eight we received the call.

Q. Who called you?

A. The operator had me called.

Q. How long had you worked in Branchville?

A. I had been on that job three years.

Q. How long had Mr. Dantzler and Mr. Youngblood been on that job?

A. I don't know, but they had been on there for several years I think.

Q. When you were called out, what did you do?

A. I went to engine 483.

Q. Had it already been fired up?

[fol. 121] A. Yes, sir, it was ready to move.

Q. When you got there who was on the engine?

A. Engineer Dantzler.

Q. When did Mr. Youngblood come?

A. A short while afterwards.

Q. He came up?

A. He came up with the orders.

Q. Did you see them?

A. No, sir.

Q. Did Mr. Youngblood show Mr. Dantzler his copy of the orders that he had?

A. From the top of the water tank where I was engaged in my duty, I saw Mr. Dantzler and Mr. Youngblood reading the orders together.

Q. This is the order that Mr. Youngblood had?

A. I didn't see it myself.

Q. What time did your engine start out?

A. About 8:25 or 8:30.

Q. Did Captain Youngblood tell you where he was going?

A. Yes, sir, after we started I asked Youngblood what orders we had, and he said we have nothing but run extra to Andrews and meet 723 at Orangeburg.

Q. You all were on the engine?
A. Yes, sir.
Q. All three of you?
A. Yes, sir.
Q. And you had just the engine and tender on this train?
A. Yes, sir.
Q. After the conductor told you that—did you stop anywhere then?
A. We stopped at the packing house track at Orangeburg.
Q. Did you get a nineteen order anywhere along the road?
A. Yes, sir, at Rowesville.
Q. How far is that from Orangeburg?
A. Eight or nine miles.
Q. How far is Rowesville from the packing house spur track at Orangeburg?
A. About seven miles.
Q. You got a "19" order at Rowesville?
[fol. 122] A. Yes, sir.
Q. That is between Orangeburg and Branchville?
A. Yes, sir.
Q. You got the "19" order at Rowesville as your train passed?
A. Yes, sir.
Q. The nineteen order is one that the conductor does not have to sign for?
A. Yes, sir.
Q. What was that?
A. That number twelve would wait at the packing house track until 9:15 for extra 483 west.
Q. Where did you stop your train?
A. At the packing house track.
Q. You went in the side track?
A. Yes, sir.
Q. Number twelve passed you?
A. Yes, sir.
Q. That was going east?
A. Yes, sir.
Q. Towards Branchville?
A. Yes, sir.

Q. What time did they pass you there?
A. Between 9:05 and 9:10.
Q. That number twelve is the regular passenger train?
A. Yes, sir.
Q. From Columbia to Branchville in the morning?
A. Yes, sir.
Q. After it passed you there at the packing house switch, you then backed out on the main line?
A. Yes, sir.
Q. And proceeded?
A. Yes, sir.
Q. Under what order did you proceed?
A. Under our running order.
Q. Which was that number?
A. Number eighteen.
Q. What happened as you approached Orangeburg?
A. We arrived at the semaphore board and the engineer blew four blasts of the whistle for the semaphore board, which was against us at the time.
Q. Then what happened?
[fol. 123] A. The board was changed to clear.
Q. Then what did the engineer do?
A. He answered the board with two blasts of the whistle and called out to me a clear board.
Q. Then what did you do?
A. We proceeded on.
Q. What happened?
A. We went on up the main line on our running order.
Q. Where did you stop?
A. After we passed the semaphore, and was going up by the pass track switch another engine gave a blast of the whistle, which indicated stop, and Dantzler stopped at the west end of the pass track, and Youngblood got down and examined the switch, and we pulled up over the switch, and Youngblood came up and got on the engine.
Q. Then what?
A. We proceeded on our way.
Q. Did you make a statement to him after he went out of the switch?
A. Yes, sir.
Q. What conversation was had?
A. I ask- him if he did not intend to back in there, and he said no, we have time to go to Stilton, and I went to work

on my fire, and the next time I realized where we were we were going over the switch at Stilton, and I turned to him to ask if he was going in there, and at that time he hollowed out to me get ready to jump,—we are going to hit.

Q. Did you hit?

A. Yes, sir.

Q. And afterwards you found yourself in the Hospital?

A. Yes, sir.

Q. That is all you know until later on?

A. Yes, sir.

Cross-examination.

By Mr. Wolfe:

Q. Mr. Witherspoon, you now live where?

A. Branchville.

Q. You were living there at the time of the accident?

A. Yes, sir.

[fol. 124] Q. You had been there for sometime?

A. Yes, sir, about three years.

Q. You were the fireman on this train?

A. Yes, sir.

Q. On number 483?

A. That's right.

Q. Mr. Youngblood was the conductor and Mr. Dantzler the engineer?

A. Yes, sir.

Q. You had not been working long at Branchville in that service, had you?

A. I had been firing for Mr. Dantzler three years.

Q. That morning was awfully foggy?

A. Yes, sir.

Q. It was one of the biggest fogs you had ever seen?

A. Yes, sir.

Q. When you got up to Orangeburg?

A. Yes, sir, it was very foggy.

Q. It was very foggy all along?

A. It was foggy, yes, sir.

Q. People had to turn on the automobile lights?

A. I didn't see any.

Q. They should have done it?

A. It would have been a good idea.

Q. You got the orders and started out from Branchville?
A. Yes, sir.
Q. Towards Orangeburg?
A. Yes, sir.
Q. The order, as you understood it from conductor Youngblood, was first a running order?
A. Yes, sir.
Q. That is, to begin with?
A. Yes, sir.
Q. And in the course of your trip, extra 483 was to pass extra 723 at Orangeburg?
A. Yes, sir.
Q. You were to five the locomotive and keep up the steam?
A. Yes, sir.
Q. And that took all of your time?
A. Yes, sir, pretty much all of it.
Q. When you got up to Rowesville you got what is called [fol. 125] a "19" order there?
A. Yes, sir.
Q. Your brother was operator then?
A. Yes, sir.
Q. And you saw your brother come out as you approached Rowesville and you reached out your arm and took it in?
A. Yes, sir.
Q. That is a hoop order?
A. Yes, sir.
Q. Or a "19" order?
A. Yes, sir.
Q. This order is to J. D.,—which is Orangeburg?
A. I am not familiar with the telegraph end of it.
Q. You don't know what the J. D. is for?
A. No, sir, I am not familiar with that part.
Q. It says, number 12, engine 1055, wait at packing house track switch Orangeburg until 9:15 A. M., for extra train number 483?
A. Yes, sir.
Q. That was the hoop order that you took?
A. Yes, sir.
Q. Of course, you turned it over to the conductor, Mr. Youngblood, or the engineer?
A. Yes, sir, to the conductor.

Q. He was on the engine with you?
A. Yes, sir.
Q. Your train proceeded until you approached the packing house switch?
A. Yes, sir.
Q. That is about three-fourths of a mile east of Orangeburg?
A. Yes, sir.
Q. That is, from the passenger station?
A. Yes, sir.
Q. That siding out there at the packing house curves out?
A. Yes, sir, to the right in the way that we were going.
Q. Number twelve, the passenger train, was standing and waiting for you?
A. No, sir, it had not arrived yet.
Q. It had not reached the switch yet?
A. No, sir.
Q. Well, when you all got there, Mr. Dantzler and Mr. [fol. 126] Youngblood headed in and obeyed the order?
A. Yes, sir.
Q. While you were in that track number twelve passed you?
A. Yes, sir.
Q. Then you all passed out and went on to Orangeburg?
A. Yes, sir.
Q. The station at Orangeburg is right on Russell Street?
A. Yes, sir.
Q. That is the main Street of the City?
A. Yes, sir.
Q. It goes up into the business part of the city?
A. Yes, sir.
Q. And the Southern tracks cross Russell Street there at right angles?
A. Yes, sir.
Q. Just as your train, extra 483, approached, Mr. Dantzler was at the throttle, and he sounded four blasts with the whistle?
A. Yes, sir.
Q. That was proper and it was according to the rules?
A. Yes, sir.
Q. That was to notify the operator on duty there at Orangeburg that he had arrived?

A. Yes, sir.

Q. Then the operator dropped the red board?

A. Yes, sir.

Q. And gave you what?

A. A clear board.

Q. The operator dropped it?

A. Yes, sir.

Q. And they call that white or clear?

A. Yes, sir, clear.

Q. That under the rules means to go on.

A. Yes, sir.

Q. When he first approached it, that was the position that it was in (indicating to the witness)?

A. Yes, sir.

Q. And then when he blew the four blasts of the whistle he dropped it in this position (indicating to the witness)?

[fol. 127] A. Yes, sir, that is right.

Q. The name of this (indicating), in the rule book is clear signal?

A. Yes, sir, that is it.

Q. On Russell Street there is a good deal of traveling?

— Yes, sir.

Q. And in the day time there is a flagman there for trains and to protect the crossing?

A. Yes, sir.

Q. Then Mr. Witherspoon,—Russell Street, as I said, is the main street in Orangeburg?

A. Yes, sir.

Q. And it is about a half mile from the Court-house to the railroad station?

A. Yes, sir, about that.

Q. You say now, to go back a minute, that they had a flagman there at that time?

A. Yes, sir, there was a flagman on the crossing that morning.

Q. They were due to have one there?

A. Yes, sir.

Q. And there was one there?

A. Yes, sir.

Q. Did you see him?

A. Yes, sir.

Q. You knew who he was?

A. Yes, sir.

Q. You were surprised to see who it was?

A. No, sir, I was not surprised.

Q. It was your boss?

A. Yes, sir.

Q. He is the train master in Charleston?

A. Yes, sir.

Q. He was there that morning flagging you across Russell Street in the City of Orangeburg?

A. Yes, sir, he was there.

Q. As a matter of fact the regular negro flagman was sick, and your boss was just relieving him awhile?

A. I don't know.

Q. But he did flag you across?

A. Yes, sir.

Q. What kind of sign did he give?

A. The come ahead signal over the crossing.

Q. He gave you the come-ahead signal?

A. Yes, sir.

[fol. 128] Q. The crossing is about seventy-five feet from the semaphore board there at the station?

A. In the neighborhood of that.

Q. Which one of the three that was on the engine remarked that there is Mr. Walker?

A. I don't know, but one of us did.

Q. Mr. Walker was there signing you ahead?

A. Yes, sir.

Q. All of you were under the jurisdiction of Mr. Walker?

A. Yes, sir.

Q. All employees on that division are under his jurisdiction?

A. Yes, sir.

Q. And you looked out that morning and saw him flagging your train across the crossing?

A. Yes, sir, he flagged us across.

Q. When you looked out, he was there signing up ahead?

A. Yes, sir.

Q. Then when you all saw Mr. Walker there signing you ahead, it was about the time that Mr. Dantzler blew for the semaphore board?

A. It was just after he blew for the board.

Q. Mr. Dantzler was slowing up as he was going to stop on the crossing?

A. Yes, sir, there is an ordinance of the town for the crossing to be flagged, and unless the flagman is there some member of the train crew has to do that. There is an ordinance there to that effect.

Q. Mr. Dantzler started to slow up?

A. Yes, sir.

Q. And when Mr. Walker signed you ahead you didn't have to stop on the crossing?

A. No, sir.

Q. Or flag it over yourselves?

A. No, sir.

Q. You saw that when Mr. Dantzler blew four blasts of the whistle, the operator on duty then dropped the board from red to white?

A. Yes, sir, clear signal.

Q. Mr. Dantzler replied to that?

A. Yes, sir.

[fol. 129] Q. How?

A. With two short blasts of the whistle.

Q. Which means—I see you?

A. It means I have your signal.

Q. Mr. Dantzler proceeded on by the semaphore board?

A. Yes, sir.

Q. The operator did not come out and give him a copy of the order or anything?

A. No, sir.

Q. Or a clearance card?

A. No, sir.

Q. Then you all went on?

A. Yes, sir.

Q. And there was a train on the pass track?

A. Yes, sir.

Q. It was between the passenger station and the freight station there?

A. Yes, sir, it was between those two stations.

Q. The passenger and freight station, I guess, is about three hundred yards apart?

A. Something like that.

Q. All of you saw that train standing on the pass track?

A. Yes, sir.

Q. The main track is on the right hand side?

A. Yes, sir.

Q. The pass track is on the left?
A. Yes, sir.
Q. And that is on your side?
A. Yes, sir.
Q. You saw that train standing in there?
A. Yes, sir.
Q. You found out afterwards that was the local freight?
A. Yes, sir.
Q. That was number 61?
A. Yes, sir.
Q. The pass track comes into the railroad right of way down beyond my place up there?
A. It does now, but it did not then.
Q. Aren't you mistaken?
A. We had a cross over switch that was not in operation at that time.
Q. It was not—are you sure about that?
[fol. 130] A. It was not in service.
Q. But it was built there?
A. Yes, sir.
Q. That is at Dunton's?
A. Yes, sir.
Q. And Mr. John Sifly's?
A. Yes, sir.
Q. You all passed number sixty-one?
A. Yes, sir.
Q. Then you went on and passed the freight depot?
A. Yes, sir.
Q. And you proceeded westward?
A. Yes, sir.
Q. And I believe you stated that the switch track up there was thrown or something was wrong with the lights—it was showing red, wasn't it?
A. We thought there was something wrong, and the engineer on number 61 blew one blast of the whistle, and that was a caution signal, and we thought that there was something wrong with it.
Q. And Mr. Dantzler stopped?
A. Yes, sir.
Q. And Mr. Youngblood got out and got it right?
A. Yes, sir, he got out to see if anything was wrong with it.

Q. And I believe he threw it?
A. I don't know.
Q. Didn't he throw it from red to white?
A. I don't think. I think he just investigated it.
Q. He did get out and investigate the switch?
A. Yes, sir.
Q. It was on your side?
A. Yes, sir.
Q. You went on then?
A. Yes, sir.
Q. How far is Stilton from Orangeburg?
A. About two miles.
Q. The accident happened a little less than a mile west of the Stilton station?
A. One-half or three-quarters of a mile.
Q. Which one said that we have time to make Stilton?
A. Mr. Youngblood.
Q. No attempt was made by Mr. Dantzler or Mr. Young-
[fol. 131] blood to go in the track at Stilton?
A. No, sir.
Q. They could have gone in there without any trouble?
A. Yes, sir.
Q. You could have gone in at the east end of the passing track at Stilton?
A. Yes, sir.
Q. Mr. Dantzler was a very careful man?
A. Yes, sir, he was.
Q. Mr. Youngblood was a very careful man?
A. Yes, sir.
Q. They were old employees?
A. Yes, sir.
Q. And were very careful?
A. Yes, sir, they were.
Q. You considered them so, didn't you?
A. Yes, sir, I did.
Q. You were badly injured in the wreck, weren't you?
A. Yes, sir.
Q. The last that you remembered was that you were going over the debris?
A. Yes, sir, the last thing I remember was the compact of the two engines.
Q. It was terrific?

A. Yes, sir.

Q. You were severely injured?

A. Yes, sir.

Q. You were injured in your head mostly?

A. Yes, sir.

Q. You don't even know when they took you to the Hospital?

A. No, sir, I don't know.

Q. There were three or four weeks down there that you didn't know anything at all?

A. No, sir.

Q. You didn't know one person from another?

A. That is correct.

Q. You were unconscious for that period of time?

A. Yes, sir.

Q. The fact is that for a long time, Mr. Witherspoon, your family despaired of your life?

A. Yes, sir, I understand so.

[fol. 132] Q. You have never recovered fully from the shock?

A. I think I have.

Q. You do the best you can?

A. Yes, sir.

Q. What you have testified to is as best you can remember it?

A. Yes, sir.

Q. Of course, it is not as fresh on your mind now as it was then—it could not be, could it?

A. I don't know.

C. P. KING, a witness for the defendants, sworn, testified as follows

Direct examination.

By Mr. Harley:

I am at present Superintendent of the Charleston Division of the Southern Railway, and have been for thirteen years. My headquarters are at Charleston. I commenced railroad work in 1889, and have worked for the Mexican National Railroad, the Illinois Central, and the Southern

Railway, having held the positions of Brakeman, Conductor, Train Master, and Superintendent. I was Superintendent in January, 1924, when these men were killed, and I was at Branchville on the morning of the wreck. There are about 400 miles in my division. That includes the line from Charleston to Columbia and from Charleston to Augusta, and from Kingville to Marion, North Carolina.

Q. Branchville is a junction point?

A. Yes, sir.

Q. How long have you had an extra train crew at Branchville to do this extra train work?

A. We have had a shifting crew there I would say for five or six years.

Q. How long has conductor Youngblood and engineer Dantzler been at Branchville doing that kind of work—that is, before this trouble?

[fol. 133] A. I could not say exactly. The positions are filled by age and seniority, and Conductor Youngblood had been there a year, I guess, but I don't know about Mr. Dantzler. I don't know just how long they had been there.

Q. How long had Mr. Dantzler been on the Southern as an engineer?

A. I don't know, but he has been under me for thirteen years.

Q. Was he engineer when you first became Superintendent, you say?

A. I think he was, but I am not positive.

Q. Where was he running?

A. For some time after I came here he was either hostling or running a switch engine in the Augusta yards.

Q. Was he familiar with the road between Branchville and Orangeburg?

A. Yes, sir, I would say he was.

Q. Do you know why this extra 483 was called out?

A. On account of engine failure of number 683 at Fort Motte.

Q. 683 was going west?

A. Yes, sir.

Q. And 483 was called out on account of that engine failing?

A. Yes, sir.

Q. And to relieve it?

A. That was it.

Q. Did you see Mr. Dantzler that morning before he went out?

A. I saw him but I didn't speak to him.

Q. You saw Mr. Youngblood?

A. Yes, sir.

Q. Where?

A. I walked in the telgeraph office while conductor Youngblood was getting his orders, and he came out, and I said where are you going for 723, and he said Orangeburg, and I said, well, get away from here and don't delay that man any longer than you can help, but let's get away from here, and my reason was that extra 723 had left Kingville twenty-six miles from Orangeburg at 4:40, and I didn't want to delay him.

Q. When did you hear of the accident?

[fol: 134] A. Something after nine o'clock. I was in my room shaving when they came in and told me about it. I didn't look at my watch.

Q. You have heard the order read that Engineer Dantzler had with him when he started out from Branchville?

A. Yes, sir.

Q. That order says Extra 723 gets this order and meet extra 483 at Orangeburg. Extra 483 run extra from Branchville to Andrews?

A. That is the order.

Q. That is what you call a thirty-one order?

A. Yes, sir.

Q. The difference between a thirty-one order and a nineteen order is that the conductor has to sign for a thirty-one order?

A. Yes, sir.

Q. That is true under the rules?

A. Yes, sir, he signs for it.

Q. And in a nineteen order he has not got to sign for it?

A. That is one difference, and another difference is that we never restrict a train's rights with a nineteen order.

Q. Numbers 723 and 483 were both extra trains?

A. Yes, sir.

Q. And they could only be run by a train order?

A. Yes, sir.

Q. That is, a written train order, Mr. King?

A. Yes, sir.

Q. Which was a superior train of the two?

A. They were trains of equal rights except at meeting points, and then extra 723 was superior at meeting points.

Q. Orangeburg was the meeting point?

A. Yes, sir.

Q. And at that meeting point extra 723 was a superior train to extra 483?

A. Yes, sir.

Q. This order that engineer Dantzler had with him,—[fol. 135] did it have anything on it to indicate that he was to receive another order or copy of another order at Orangeburg?

A. No, sir.

Q. It was a direct meet order?

A. Positive meet order.

Q. They have a train order board at Orangeburg?

A. Yes, sir.

Q. That is called a semaphore board?

Q. But it is nothing but a train order board?

A. That is all.

Q. When an agent is on duty that arm is extended and is red?

A. Yes, sir.

Q. It is that way all of the time when an operator is on duty?

A. Yes, sir.

Q. Now, when a train approaches,—especially when this extra 483 appr-ached that train order board with this order, and it stopped, then they whistled for a signal?

A. Yes, sir.

Q. The engineer would give four short blasts of the whistle to call for the signal?

A. Yes, sir.

Q. If the signal is given and the board goes down,—what does that mean?

A. It means they have no orders for them.

Q. And to do what?

A. Proceed.

Q. Proceed on what?

A. The orders they are already running on.

Q. That pass track is on the west side of the depot at the Orangeburg office?

A. Yes, sir.

Q. And of the semaphore board?

A. Yes, sir.

Q. It is about seventy-five yards west of the depot on the Columbia side?

A. Yes, sir.

Q. In order to get into that passing track it is necessary to pass the semaphore and the depot to get in there?

A. Yes, sir.

[fol. 136] Q. Is it not a fact that an engineer or conductor holding this order,—it is a positive meet order, you say,—and the engineer giving four blasts of the whstle when the semaphore is showing red, and then it shows white, couldn't one assume that he could pass the depot and then go into the passing track?

A. Yes, sir, that is his duty. Under our yard limit rules he had a perfect right to go down the main line and back in the west end of the passing track.

Q. Orangeburg had a yard limit rule?

A. Yes, sir.

Q. What are the requirements of that?

A. Our yard limit rules permit second and inferior class tranis to operate the main line in the yard limit, without regard to second or inferior class trains, but all extra trains and inferior class trains are required to run in the yard limit period at such speed that they can stop in case the other track is occupied by train and cars.

Q. Under that yard limit rule then, extra 483 could have done what?

A. Gone down and backed into the west end of the passing track.

Q. From the Columbia side?

A. Yes, sir.

Q. But extra 483 did not have any business beyond the yard limit space?

A. No, sir.

Q. Extra 723 had a right to the main line?

A. Yes, sir.

Q. It was the duty of engineer Dantzler under the terms of this order to have gone in the pass track at Orangeburg, in order for 723 to pass?

A. Yes, sir.

Q. Could there had been any difference if,—in other words, if he had been furnished a copy of the order at

Orangeburg, it would have been copies of the same thing that he had at Branchville?

A. Yes, sir.

Q. Directing him to meet this extra train number 723 at Orangeburg?

[fol. 137] A. Yes, sir, identical to what he had.

Q. It would have been a copy of the same order?

A. Yes, sir.

Q. Which is known as order number eighteen in this case?

A. Absolutely.

Q. Have you a block system at Orangeburg?

A. No, sir, we have none on the Charleston division.

Q. What is a block system?

A. There are two kinds,—absolute and permissible, and a manual and automatic block. On the automatic block the semaphore is white until the train strikes the block, and as long as the train is in that block, he is protected by a board which is showing red.

Q. When it is automatic what causes the red to drop.

A. It is governed by an electric current.

Q. You have no such system on the Charleston division of the Southern Railway?

A. No, sir.

Q. No kind of block system?

A. None at all, no.

Q. And of course there is none at Orangeburg?

A. No, sir, that is in the Charleston division and there is not a block system there.

Cross-examination.

By Mr. Wolfe:

Q. The automatic block and the manual is where you have a double track?

A. We have some blocks on a single track.

Q. Between points where there are semaphore boards the operatives speak of that in there as the block,—that is the term used?

A. There is no block in there.

Q. They speak of it in operating as the block?

A. I never heard of it.

Q. They don't call it the block?

A. No, sir.

Q. They use it on the clearance card in the Form 603 as shown in the rule book?

A. That dummy is a double form. It is used on a [fol. 138] single track railroad, and where we have blocks. It is used out of Columbia. They have a block from Columbia to Andrew Yard, and from Columbia to Blanding Street.

Q. At Branchville there is no block there?

A. No, sir.

Q. The operator uses it there?

A. Yes, sir, it has no significance.

Q. He says in there that the block is O. K.?

A. I don't know what he means.

Q. It is in the rule book?

A. Yes, sir.

Q. They use in the rule book the same that Mr. Van Lehe used at Branchville?

A. Yes, sir.

Q. In speaking of the track,—where a man gives a train order at Branchville that carries him to Orangeburg,—the operatives speak of the track in there as the block?

A. No, sir, we have an intervening telegraph office in there, and that would not be true.

Q. An intervening telegraph office?

A. Yes, sir.

Q. Where?

A. At Rowesville.

Q. Then this rule would be without any meaning?

A. That is used where we have a block system.

Q. Mr. Von Lehe used it?

A. He used that card in this instance, yes, sir.

Q. And that card is in evidence in this case?

A. I think so.

Q. Well, I will go to another matter,—Mr. King, at the investigation into this wreck before the Railroad Commission, would you tell us whether you made this statement,—the transfer between the third trick and first trick men was two orders for extra 723 east, and I said if the order had been addressed to the operator, then the transfer would have been two orders for extra 723 east, and one for the [fol. 139] operator,—you made that statement, didn't you?

A. Yes, sir, I said that.

Q. Mr. Shealey, the Railroad Commission Chairman, was there at this investigation?

A. Yes, sir.

Q. He asked you this question—But where do you get any rule, Mr. King, for allowing number 483 to pass without a clearance card, and didn't you answer "I grant you for all intents and purposes the order was the same as a middle order"?

A. Yes, sir, if that is in the record.

Q. Did you say that?

A. I did.

Q. Mr. King, at a former trial of one of these cases, you were asked this question, "The engineer or conductor once in possession of a train order, telling him what to do, can the semaphore board affect or change that order?". And your answer was this: "Only to this extent. It would delay the execution of the order. Say a crew on extra 483 went to Orangeburg and called for the board and didn't get it. They are tied up there. They have called for the signal and it was not changed to proceed. They would be tied up until it is changed to proceed or they are given a clearance card." That is correct, is it not?

A. Yes, sir.

Q. Mr. Dantzler had worked for you quite awhile?

A. Yes, sir.

Q. And also Mr. Youngblood?

A. Yes, sir, they were on the Division when I came there thirteen years ago.

Q. They were reliable men?

A. I considered them so.

Q. You considered them careful, prudent and reliable men?

A. Yes, sir, the average men.

Q. In this message in question that was given to extra train 483 at Branchville—if the words "and operator" had been in the address, it would have meant a five copy order?

[fol. 140] A. If the dispatcher had designated it as a five copy it would have been.

Q. If the words "and operator" had been in the address of this message, it would have been a five copy order?

A. Yes, sir.

Q. If the words "and operator" had been in there, and it would have been a five copy order, the operator would have orders for extra 483 at Orangeburg?

A. Provided 483 got there before 723.

Q. If extra 483 had gotten there first then the operator at Orangeburg had two copies for them?

A. He should have had, yes, sir.

Q. The order that was given Mr. Dantzler and Mr. Youngblood at Branchville, it would have nothing on it to indicate a repeated order of that nature was to be given to them at Orangeburg?

A. No, sir.

Q. It would not belong on it?

A. No, sir.

Q. And there ought to have been given in connection with the two copies at Orangeburg a clearance card?

A. Yes, sir.

Q. That order, which was sent to Orangeburg—if it designated five copies the operator at the Orangeburg office should have made five copies?

A. Yes, sir, it depends upon what trains the order was to go to. If he had two trains at Branchville going in the same direction, he would have to have five copies there.

Q. Now, in this case here this extra 483 was to meet extra 723—the dispatcher in Charleston would send that order at the same time to the operator in Branchville and also in Orangeburg?

A. Yes, sir.

Q. It would have the words "and operator" in the address?

A. Yes, sir.

Q. That is, at Orangeburg?

A. Yes, sir.

Q. That would mean that the operator at Orangeburg would make five copies?

[fol. 141] A. If the dispatches said so.

Q. Then if this mesage was addressed "and operator"—then the operator at Orangeburg would have had two copies for Dantzler and Youngblood's train?

A. Yes, sir, provided they got there first.

Q. They did get there first?

A. Yes, sir.

Q. And the operator there could not have dropped the board to clear them?

A. No, sir, they should have had two copies, but the orders would not have given them any additional information than what they had already.

Q. If extra 483 was not going any further than the pass track, why not hold the board on him—it had no reference to the pass track?

A. It referred to the main line.

Q. If the words "and operator" had been in there, and it had been a five copy order, the operator would have had orders for them?

A. Yes, sir.

Q. And he could not have dropped the board?

A. No, sir, he could not.

Redirect examination.

By Mr. Harley:

Q. How far does the yard limit extend in Orangeburg to the west?

A. One thousand feet west of the west end of the passing track switch approximately.

E. W. Bellinger, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Blatt:

I formerly resided in Barnwell County and lived here for a number of years. My father was Dr. Martin Bellinger, who lived here and practiced here. I am now employed by the Southern Railway as Chief Dispatcher at Columbia. I have been Chief Dispatcher five years, and have worked [fol. 142] for the Company since 1902. I have been a dispatcher for twenty years. I pass Orangeburg occasionally, but I have never made an investigation of the yard. My territory extends from Charlotte to Jacksonville and from Columbia to Augusta on that line.

Q. You have heard read the order that Captain Dantzler had?

A. Yes, sir.

Q. Did that order indicate to him that he was to receive any additional orders at Orangeburg?

A. No, sir, and at no other point.

Q. There is nothing in that to indicate that any other order would be given him?

A. Not a thing, no.

Q. How are extra trains run?

A. By train order.

Q. Is there such a thing for an extra train as a verbal train order, Mr. Bellinger?

A. No, sir.

Q. Is there anything that governs the operation of extra trains in so far as the semaphore board is concerned?

A. No, sir.

Q. Can a train Master or Superintendent give a verbal train order for the operation of extra trains?

A. No, sir.

Q. The engineer in possession of an order, similar to the one that Captain Dantzler had, upon approaching the station at Orangeburg, and giving four blasts of the whistle, and the operator dropping the semaphore board—what was his duty under the order that he had?

A. To proceed under the order that he had.

Q. If his train was an inferior train—what was his duty, with an order like that?

A. To go in the passing track at Orangeburg and wait until number 723 had arrived.

Q. If no further written orders were given to extra train number 483—would you say that that order had been annulled?

A. No, sir.

[fol. 143] Q. How can a train order be annulled?

A. By another train order.

Q. Would any one have a right to assume that it had been superseded?

A. No, sir, not at all.

Q. How could it be superseded?

A. It would have to be superseded by another train order.

Q. How could it have been fulfilled?

A. To carry out the wording of the order.

Q. In this case what?

A. To meet extra 723 east at Orangeburg and after it had come to go to Andrews.

Q. That was the order he had?

A. Yes, sir.

Q. And it was his duty to carry that order out?

A. Absolutely.

Q. Is there such a thing when there is a meet order to assume that a train was in the siding at Orangeburg?

A. No, sir, they have to satisfy themselves beyond a doubt that it is in there.

Q. Before they can proceed on their running order?

A. Yes.

Q. That duty rests with whom?

A. With both the conductor and the engineer in accordance with our rules.

Q. Then when a train order is once given, and is not annulled, or superseded or fulfilled, it is the duty of the train crew to do what?

A. Fulfill it.

Q. Then, in this case would you say if Captain Dantzler had in his possession the order you have seen in this case, and he drove his train to Orangeburg, and upon approaching the semaphore board, and blew four blasts of the whistle, and the board was dropped, and he went on down the road three miles and had this collision, would you say that he had violated his train orders?

A. He had not carried it out.

Q. Had he violated it?

A. Yes, sir.

[fol. 144] Q. What does the dropping of the semaphore board at Orangeburg mean?

A. That there is no orders there for that train.

Q. And to do what?

A. Proceed with the orders that he had.

Cross-examination.

By Mr. Brown:

Q. The clear board,—white board, under the circumstances meant that he had no train orders for him?

A. Yes, sir.

Q. And to proceed under the orders which he had?

A. That is it, yes.

Q. Which was to meet this extra 723 at Orangeburg and then go to Fort Motte?

A. Yes, sir, go to Andrews.

Q. But he was first to go to Fort Motte and get this disabled train they are talking about?

A. Yes, sir.

Q. But first he had to get this broken down train at Fort Motte and then go to Andrews?

A. Yes, sir, that was his order.

Q. If he got the white board at Orangeburg, it meant just the same as if it was written in plain language and all,—we have got no further orders for you and proceed unders the orders which you have, interpreted in the language of the railroad means meet extra 723 here, and then go to Fort Motte and then to Andrews?

A. Yes, sir.

Q. You don't question the testimony of Mr. Rogers and the other experts?

A. No, I do not.

Q. They say that these men were working under a thirty-one, five copy order?

A. Yes, sir.

Q. And when Mr. Dantzler got to Orangeburg he was entitled, under the rules of the Company, to receive two copies of this order with a clearance card, and oral in-[fol. 145] structions as to how to go into the pass track?

A. If the order was there for him he was entitled to it.

Q. You admit that?

A. I say that, yes.

Q. If it was sent out from Mr. Rogers' office in Charleston, as it is written in the original train order book, it ought to have been there?

A. Yes, sir.

Q. Somebody had violated the rules, hadn't they?

A. Yes, sir.

Q. And if that violation of the rules kept him from going into the side track and caused his death, that violation was responsible for his death, was it not?

A. No, sir.

Q. Now, supposing that that violation of the rules is what misled him, and kept him from going into the side track, where he would have been safe, and he proceeded down that track, and met his death,—then you say that violation of the rules did not cause his death?

A. I cannot suppose that he knew that order should have been there.

Q. Everybody knew it,—everybody that knows that running under a thirty-one five copy order,—everybody knows that when he got there he was entitled to two copies and a clearance card?

A. Mr. Brown, if the five copy order had been there he should have gotten the five copy order and a clearance card.

Q. That is right?

A. If it had been there he should have gotten it.

Q. It ought to have been there?

A. Yes, sir, it should have been there, but it was not.

Q. But it should have been there for him?

A. I said yes.

Q. And the operator should have given him two copies of that order and a clearance card?

A. Yes.

Q. Whose fault was that?

[fol. 146] A. Mr. Rogers said that it was the fault of the operator for not putting it down.

Q. It was not Youngblood and Dantzler's fault?

A. No, sir.

Q. You admit that it was the negligence of an operator of the Railroad Company?

A. That is what Mr. Rogers said.

Q. Now, you tell the jury that if he was entitled to two copies of an order, and a clearance card, with directions to go in the pass track,—and that the failure to give him that clearance card, and the two copies of the order in this case, and put him in the pass track,—caused him to go on down and meet his death,—you say that the failure to give him that meet order there was not the cause of his death?

A. The clearance card and orders were to be his if they were there for him.

Q. They ought to have been there for him?

A. Yes, sir.

Q. If they were not there, and the failure to get them caused him to go on down the track and meet his death,—certainly there was a contributing cause?

A. It would not have been any information to them.

Q. What?

A. Two more copies of the order.

Q. I asked if he was entitled to those things?

A. Yes, sir, if they were there for him.

Q. Then he should have had them?

A. If they were there for him, yes.

Q. If he did not get them,—and the failure to get them caused him to meet his death,—would you not say that that contributed to his death?

A. If I knew that to be a fact I would say yes, but I don't know it.

Q. If the failure to get them caused him not to go into the side track, and caused him to go on down the track at thirty miles an hour,—would you not say the failure to get [fol. 147] that order and clearance card was a contributing factor of his death?

A. I will say that if he had gotten the order that was placed there as an additional precaution, he would have had the same thing he already had.

Q. It doesn't matter about that—wouldn't that have been a contributing factor?

A. He would have had the same thing——

Q. Finish up?

A. That is all I have to say.

Q. I ask you this question—you are a superior of these men on the railroad—you say that he was entitled to those things?

A. Yes, sir.

Q. Now, if the failure to get the two additional copies—the middle order as you call it—the precaution order, and the clearance card—if he did not get them, and that caused him not to go into the side track, but go on down that track, would you not say that that was a contributing factor to Mr. Youngblood and Mr. Dantzler's death?

A. I don't think I can answer that.

Q. Why?

A. I don't know.

Q. You don't know whether that would have caused his death or not?

A. No, sir, I don't know.

Q. You don't?

A. No, I couldn't say. I don't know what caused it.

Q. This 723 was going east towards Charleston?

A. Yes, sir.

Q. That train had left Andrews yard at Columbia?

A. It was made up there.

Q. According to the record and the testimony you have heard, it had local work to do at Orangeburg?

A. Yes, sir, to set off some cars.

Q. That meant it had to stop there?

A. Yes, sir.

Q. This 483 was going west towards Columbia?

A. Yes, sir.

[fol. 148] Q. That was going to relieve the broken down train?

A. I understand so.

Q. Now, when he blew for orders he didn't get what he was entitled to?

A. It was not there for him.

Q. You have heard that it was a dark and foggy morning?

A. Yes, sir.

Q. If he proceeded down that road, after getting the white board at Orangeburg—and a notice from another train of toot, toot, which is look out for a switch post at the end, and went down there and found the red light on at the other end of the pass track, and found that another train had come in there—what conclusion would you reach as to 723 coming or being in there?

A. I could not come to any conclusion unless I saw the train number or some of the crew I knew.

Q. You heard Captain King said that he told these fellows to hurry on and not keep number 723 waiting at Orangeburg?

A. Yes, sir.

Q. He said that here on the stand?

A. I think so.

Examination by Mr. Wolfe:

Q. This is the order given to Mr. Dantzler at Branchville (indicating to witness)?

A. Yes, sir.

Q. This order does not belong to have anything on it telling him that there would be orders at Orangeburg for him?

A. No, sir.

Q. However, the rules require that in such a case, where the dispatcher sends a five copy order such as that, including the words "and operator" in the message as is here—then there ought to be five copies of the order at Orangeburg?

A. Yes, sir.

Q. The engineer and conductor are examined in those rules and required to know them?

A. Yes, sir.

Q. They understand them?

A. They ought to.

[fol. 149] Q. Then they would naturally expect the rules to be carried out, wouldn't they?

A. Yes, sir.

Q. And it would be natural to expect that there were two orders for them at Orangeburg?

A. Yes, sir.

Q. The record shows that there was a five copy, thirty-one order, addressed to operator as well sent to Branchville and Orangeburg at the same time—now under the rules, the operator at Orangeburg, if it was addressed to him, and with the direction to make five copies—he ought to have done that?

A. He would ask the dispatcher what the other copies were for.

Q. He ought to have done that?

A. Yes.

Q. Now, you don't understand me, when you say he would ask the dispatcher what the other copies were for—a train order addressed five copy from the dispatcher in Charleston, it was the duty of the operator in Orangeburg to make five copies?

A. Yes, sir.

Q. If the 723 had arrived there first, should they have been given copies of that order?

A. Yes, sir, the first train that gets there gets the order.

Q. That would have fulfilled the order, would it not?

A. Yes, sir.

Q. 723 did not get there first?

A. No, sir.

Q. But 483 got there first?

A. Yes, sir.

Q. And number 483 ought to have gotten two copies of the order then?

A. Yes, sir.

Q. And the clearance card?

A. Yes, sir, the clearance card goes with all orders.

Q. If the order was a five copy order, and addressed to Orangeburg "and operator," it was somebody's fault connected with the railroad that it was not there?

A. Yes, sir.

Q. And if it had been there, the operator at Orangeburg could not have dropped the red board?

A. No, sir.

[fol. 150] Q. Those extra trains usually carry some freight for Orangeburg, don't they?

A. Mr. Rogers, who has charge of that, when he issues these instructions to the train crew sends me a copy of it, because I have charge of the yard that make them up, and he instructs the through freight to handle the merchandise cars from our yard to Orangeburg.

Q. Mr. King said the other day that practically every freight carried some Orangeburg freight?

A. Yes, sir.

Q. They have to get in down there?

A. Yes, sir, I have charge of putting it on the trains in Columbia.

Q. There is always freight for Orangeburg?

A. Yes, sir, they have freight for Orangeburg.

Redirect examination.

By Mr. Blatt:

Q. If two additional copies were given him at Orangeburg, would it or not have been copies of the identical order he had in his possession?

A. Yes, sir.

Q. Would it have conveyed any additional information?

A. No, sir.

Q. He should have gone where under the order that he had?

A. In the side track.

Recross-examination.

By Mr. Wolfe:

Q. If the orders were there for him, then carrying out the two copies of the order and the clearance card would have served to remind him of the meet order?

A. Yes, sir.

H. E. THOMPSON, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Blatt:

I live in Batesburg. I did live in Barnwell County at [fol. 151] Blackville, and married there. I am connected with the Southern Railway as an engineer, and have been an engineer for thirty-seven or thirty-eight years. I helped build the line from Blackville to Columbia, and was one of the first engineers to run through here on the Columbia and Savannah line.

Q. You have seen that order we have been discussing?

A. Yes, sir.

Q. Did that order on its face indicate to Captain Dantzler when it was delivered to him at Branchville that he was to receive another order at Orangeburg?

A. No, sir, it did not.

Q. With that order in his possession upon reaching Orangeburg and the board having dropped there, after four blasts of the whistle—what was his duty?

A. To go in the siding there and meet number 723.

Q. How are extra trains run, Captain?

A. On written train orders.

Q. Is there any such thing in railroading as verbal train orders?

A. No, sir.

Q. Is there such a thing as changing a train order by changing a semaphore board?

A. No, sir.

Q. Is there such a thing as changing a written train order by someone waving a train across a crossing?

A. No, sir.

Q. When a train order—when a written train order is in effect, how is it superseded?

A. By another written train order.

Q. How is it fulfilled?

A. By carrying out the instructions.

Q. On the day in question, if Mr. Dantzler drove his train to Orangeburg and blew four blasts of the whistle, not having in his possession another train order superseding the one that he had, and the board was dropped, and [fol. 152] he went on by Orangeburg, and was killed—would you say that he had obeyed the written train order that he had?

A. No, sir, he had violated it.

Q. What was his duty?

A. To go in the side track at Orangeburg and wait on the 723 to get there.

Q. And if he did not do that, he did what?

A. He violated it.

Cross-examination.

By Mr. Brown:

Q. If number 723 was there on the siding, he would not have to go in?

A. No, sir.

Q. You heard Mr. King say that these were equal trains except at meeting points?

A. Yes, sir.

Q. He was right when he said that?

A. Yes, he was.

Q. You heard him say that he told Mr. Youngblood to "light out" at Branchville, and not keep this train 723 waiting on him?

A. Yes, sir.

Q. If 723 had beat this 483 there by some time, you don't say as a practical man that 723 would have stood there and waited for 483 to come and go into the side track?

A. Yes, sir.

Q. That is what you say here?

A. Absolutely.

Q. You mean to say if 723, if it had been there a half an hour ahead, that it would have waited there for 483 to come and go around it?

A. I don't think they would put a seventy-one car train in a side track with a light engine coming by.

Q. They had a mile track there?

A. Yes, sir, about that.

Q. And a seventy-one car train can run on the pass track as well as on the main line?

A. Yes, sir.

Q. Captain King said that these trains were equal except at meeting points?

A. Yes, sir.

[fol. 153] Q. You heard him say that?

A. Yes, sir.

Q. And last week you all said here in another trial that 723 was a superior train?

A. Yes, sir, and it would hold the main line now at a meeting point.

Q. It would stand in the middle of the main line and wait for 483 to go in and run around it?

A. Yes, sir.

Q. That is what you say?

A. It is done every day.

Q. In practical railroading?

A. Yes, sir.

Q. When Dantzler and Youngblood got on that train with a thirty-one order, they were presumed to know the rules?

A. Yes, sir, they knew the rules.

Q. You knew both of them?

A. Yes, I knew Mr. Dantzler pretty well, but I didn't know Mr. Youngblood.

Q. If a five copy order was sent to Orangeburg to the trains in question, and operator—when Mr. Dantzler operated engine 483, and approached that semaphore board and blew the signals for orders—what were they entitled to?

A. If there was a five copy order there they were entitled to copies of the order.

Q. How many?

A. Two copies.

Q. And a clearance card?

A. Yes, sir.

Q. What was the purpose of those additional orders?

A. You give a copy to the first train that comes.

Q. It is a precaution?

A. Yes, sir.

Q. To keep you and Mr. Dantzler, or any other sleepy engineer who has been working all night, from overlooking his orders and going by the post?

A. Yes, sir.

Q. If those orders had been there for him as the Chief Dispatcher says they ought to have been there for him, and they had gone into the side track, there would not have been a wreck?

A. No, sir, there would not.

Q. Now, if the failure to give him those orders with [fol. 154] the clearance card caused him to pass that siding, and proceed to Stilton where he met his death, would you not say that failure was a contributing cause of his death?

A. No, sir, I don't know.

Redirect examination.

By Mr. Blatt:

Q. You are familiar with the passing track at Orangeburg?

A. Somewhat, yes.

Q. Are there similar tracks on this line?

A. Yes, sir.

Q. You run where?

A. From Columbia to Savannah.

Q. Where are some of the similar conditions on this line between Columbia and Savannah and by Barnwell?

A. At Allendale and also at Hardeeville.

Recross-examination.

By Mr. Wolfe:

Q. That is a copy of the order in question—it says "Extra 723 east gets this order and meet extra 483 at Orangeburg. Extra 483 run extra from Branchville to Andrews"?

A. Yes, sir, I understand so.

Mr. Wolfe: I offer, if the Court please, this copy of the order for identification.

Mr. Wolfe (continuing):

Q. The proper wording of that according to this slip is "Extra 723 east gets this order and meets extra 483 west at Orangeburg—engine 483 run extra Branchville to Andrews"?

A. Yes, sir, that is what is on there.

Q. That is in the form of a proper meet order, that is to say where it says on this slip of paper "No 1 one Eng. 111 meet No. 2 two eng. 112 at B."?

A. Yes, sir.

Q. That is in exact conformity to the rule book—the one [fol. 155] you last read?

A. I will have to see the rule book.

Q. What page is that in the rule book (indicating page of rule book to the witness)?

A. Page forty-eight.

Q. And that is example A. is it not?

A. That is correct.

Q. That is a meet order in exact conformity with the rule book?

A. Yes, sir.

Mr. Wolfe: We offer this copy in evidence as shown on this slip of paper.

Mr. Wolfe (continuing):

Q. What is this?

A. Eng. 99 run extra A. to F.

Q. What is that?

A. That is called an extra.

Q. That is in conformity with the rule of the Company?

A. If it is in there, yes.

Q. You know the rule book?

A. Yes, sir.

Q. And it is in there?

A. Yes, sir, and you can put anything on a running order that you want to put on there.

Q. That is an example?

A. Yes, sir.

Q. At page fifty-four, sub-division G.,—an example of a running order,—that is in proper form?

A. Yes, sir.

Mr. Wolfe: We offer this other copy in evidence.

Mr. Wolfe (continuing):

Q. In a thirty-one, five copy order, with the words "and operator" in the address,—when that is sent out by the dispatcher to the meet point,—the operator at the meet point ought to make five copies?

A. Yes, sir.

Q. He keeps one for himself?

[fol. 156] A. Yes, sir, for his files.

Q. Then there are two copies for each train?

A. Yes, sir.

Q. The train order book contains the words "and operator" in that order, doesn't it?

A. Yes, sir.

Q. And that means that the operator at Orangeburg ought to have made five copies?

A. Yes, sir.

Q. And if it was sent right, and the operator at Orangeburg had taken it right, there would have been two copies of that order there for extra 483?

A. Yes, sir.

Q. And the operator could not drop the board?

A. No, sir.

Q. If he had train orders there for a train, he is not supposed to drop it?

A. No, sir.

Q. If he had gotten two copies there for the 483 he would have had two copies?

A. Yes, sir.

Redirect examination.

By Mr. Blatt:

Q. If an extra train has a running order and a meet order they put it all into one order?

A. Yes, sir.

Q. Similar to the one that we have here?

A. Yes, sir, similar to that.

Q. It is not split up in two or more orders?
A. No, sir, it is combined into one order.
Q. As in this case you say?
A. Similar to it, yes, sir.

J. C. STREET, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

In January, 1924, I was engaged in the automobile business. I became sick the latter part of December, 1293, or the first part of January, 1924. On the morning of Jan-
[fol. 157] uary 3rd, 1924, I was at Orangeburg in the Hospital. I went there on the first day of the year and stayed four days. I was operated on. I knew Engineer Dantzler, knew him personally, and he knew me.

Q. On the morning of January 3rd, 1924, did you see Mr. Dantzler anywhere?
A. Yes, sir, he was pushed in my room foot foremost on an ambulance, and he recognized me and spoke to me.
Q. What did he say?
A. He said Callie, for God's sake help me,—I am burning up and I am dying.
Q. Was he suffering?
A. He seemed to be.
Q. Go ahead, and tell what else he said, if anything.
A. They brought him in and put him on a bed, and then the nurses and doctors got around him, and commenced to attend to him, and that was about ten o'clock, and about an hour after he got in there he turned over to me and said Callie, I want you to get something out of my pocket and some bills and take care of them until my wife comes, and I said all right, Kit, and I said what happened, and he said Callie, met 723 on the main line, and I had a dead meet order with them at Orangeburg, and I got the order and read it——
Q. Did he say anything about forgetting his orders?
A. Yes, sir, he said to get those orders and read them if I wanted them and those other notes and different things,

and to save them, and later in the day I asked him the second time,—and I said Kit, how come you all to do that, and he said Callie, I don't know,—I just forgot,—it is too late now, and I am just to blame for it.

Q. What did you do with the orders?

A. I kept them and delivered them to the Coroner.

Q. What is his name?

A. Mr. Rickenbaker.

Q. When did you get out of the hospital?

A. The day afterwards.

[fol. 158] Q. What have you been doing since?

A. Automobile work mostly.

Q. Where?

A. At Branchville and six months also at Denmark.

Cross-examination.

By Mr. Wolfe:

Q. You live now at Branchville?

A. Yes, sir.

Q. You used to work for the railroad?

A. Yes, sir.

Q. Up until when?

A. 1914 I left the railroad.

Q. You knew Mr. Youngblood and Mr. Dantzler, didn't you?

A. Yes, sir.

Q. You went into the hospital on January 1st?

A. Yes, sir, the first day.

Q. That is the Orangeburg Hospital?

A. Yes, sir.

Q. What day did this accident happen?

A. It was on January 3rd.

Q. What year?

A. In 1924.

Q. You had been in the hospital then three days?

A. Yes, sir.

Q. You were dismissed from the hospital after being in there four days, you say?

A. Yes, sir.

Q. You were dismissed the next day then?

A. Yes, sir.

Q. I believe you told Mr. Harley you saw them or heard them bring the men up?

A. Yes, sir.

Q. They brought him in your room?

A. Yes, sir.

Q. What number was the room?

A. I don't remember, but I think it was number 15. I was in misery when I went in there myself, and I didn't pay any attention to the room number.

Q. You had been operated on yourself?

A. Yes, sir.

Q. And you were in misery?

[fol. 159] A. Yes, sir, but it was over with when I was operated on.

Q. They brought two men in there?

A. No, sir.

Q. They didn't bring Mr. Joe Witherspoon in your room?

A. No, sir.

Q. You know him?

A. Yes, sir, I ought to.

Q. How many beds did they have in your room?

A. They had two beds in there.

Q. They didn't bring Witherspoon in there?

A. No, sir.

Q. Or Mr. Youngblood?

A. No, sir.

Q. They brought you to Columbia to the investigation before the Railroad Commission?

A. Yes, sir.

Q. Mr. King, the Superintendent, had you to go?

A. Yes, sir, some one summoned me.

Q. You were summoned there?

A. Yes, sir.

Q. To appear before the South Carolina Railroad Commission?

A. Yes, sir.

Q. What date was that?

A. I don't remember.

Q. That was on the 9th of January, wasn't it?

A. I don't remember.

Q. It was not long afterwards?

A. No, sir.

Q. It was about a week?

A. Yes, sir.

Q. Mr. King, the Superintendent, was there?

A. Yes, sir.

Q. And Mr. Hudson, the General Superintendent, was there?

A. I don't remember whether he was there or not.

Q. You know him?

A. Yes, sir, personally.

Q. Didn't he ask you some questions in the examination, and didn't you speak to him personally?

A. I don't remember.

Q. The Railroad Commission was there?

A. Yes, sir.

Q. And Mr. Shealey, and several of them?

[fol. 160] A. Yes, sir.

Q. Where were you when Mr. Dantzler was brought to the hospital on January 3rd?

A. Lying on my bed.

Q. You could not get up?

A. I did get up that afternoon.

Q. You didn't get up until the afternoon?

A. No, sir.

Q. You say you know Mr. Hudson?

A. Yes, sir.

Q. In that examination were you not asked this question,—you took this order from Engineer Dantzler,—is that correct?

A. Yes, sir.

Q. And didn't you say this,—Now, Mr. Hudson, if you will let me explain it to you,—?

A. Go ahead.

Q. Didn't you speak to Mr. Hudson and address him in that manner?

A. A good many of them was up there and I don't remember.

Q. You were in the bed all of the morning?

A. Yes, sir.

Q. That is, the morning of the wreck?

A. Yes, sir.

Q. Tell whether or not you didn't testify to this before the Railroad Commission,—didn't you say "Just let me explain it to you. I was lying in my bed and I heard Mr.

Dantzler's whistle blow and I recognized him from his whistle, and I tried to look out but I couldn't see on account of fog, about eight or eighty-thirty, I didn't have no time piece, and about ten-thirty I heard an awful noise down stairs. Somebody says get ready, we've got a whole bunch of men out here burned up. I was in the room and the door was open, and I got up and pushed my bed to where I could see out in the hall. They carried in one fellow and I said 'that fellow is certainly scalded.' About that time the elevator came up again and I heard Kit Dantzler's voice. [fol. 161] I railroaded with him from 1906 until 1915. I knew him well. They pushed Kit in the door in my room; had him covered up. The minute they pushed him in the door he recognized me and says "Kelley, for God's sake, I am burning up inside." His hands were burned off, his nails were gone, and from here up (indicating) was burned. He kept hollering 'for God's sake do something for me.' I rung the bell I had on my bed. Of course, they run back to get the others, but I kept the bell ringing until I got four or five nurses and I told them if they didn't do something I was going to get up myself. They gave him a shot or two to quiet him a little bit, but after a little he says 'Kelly, do something for me. I am burning up.' I rung and got some water for him. After awhile I says Kit, what has happened. He says "Kelly, I overlooked the 723 and struck them just on the other side of Stilton down in that dip." Now, didn't you say that?

A. Yes, sir, that is correct.

Q. You did get up out of bed then,—you got the train order off of Mr. Dantzler and gave it to the Coroner?

A. I gave it to Dr. Rickenbaker.

Q. You gave it to the Corner?

A. Yes, sir.

Q. At the Railroad Commission hearing, didn't you swear to this,—in reference to the order I delivered it to the Head Nurse?

A. No, sir, not the order.

Q. You swear positively that you delivered the order to Dr. Rickenbaker?

A. I certainly did, and he will say so.

Q. That is the man (indicating party in Court room)?

A. Yes, sir.

Q. You see him there?

A. Yes, sir, I see him.

Q. You didn't swear before the Railroad Commission that you gave it to the Head Nurse?

A. Not the train orders, but I gave the Head Nurse some other things in his pocket.

[fol. 162] Q. I want to give you notice of contradiction,—did you or not give the order to the trained nurse?

A. No, sir, I gave it to Dr. Rickenbaker, the Coroner.

Q. You swear that you gave it to him personally?

A. Yes, sir.

Q. Now, Mr. Street, when they first brought Mr. Dantzler up there in the room, and you rang for the nurses,—they came, I believe?

A. They brought the nurses in with him and they laid him down and walked out, and then Mr. Dantzler complained of being in such agony I rang for them.

Q. You rang for the nurses?

A. Yes, sir.

Q. And they came?

A. Yes, sir.

Q. And gave him morphine?

A. Something, yes, sir.

Q. Who did that?

A. The nurses.

Q. They put it in his arm?

A. Yes, sir.

Q. How many times?

A. I don't know.

Q. Did they put it in more than once?

A. Yes, sir, about an hour afterwards they gave him another shot of it.

Q. You have just said that they gave him a shot or two to quiet him a little bit?

A. Yes, sir.

Q. You say now that is correct?

A. Yes, sir.

Q. You said he told you what,—how long afterwards was it that he talked any?

A. After he came in the room?

Q. Yes.

A. After they got him quiet it was about an hour.

Q. What time did they bring him in?

A. About ten or ten-thirty.

Q. About an hour after that he said what to you?

A. I asked him what happened, and he told me he overlooked his orders and met 723 above Orangeburg,—that he [fol. 163] had a dead meet order to meet them at Orangeburg, and if you want to see them get them out of the jumper pocket and read them.

Q. You got them out?

A. Yes, sir.

Q. And kept them until Dr. Rickenbaker came in?

A. Yes, sir.

Q. On the third of January, 1924, did not Mr. Dantzler state this, or these words in substance to you and in your presence, and in the presence of the Coroner, Dr. Rickenbaker, and in the presence of Mr. J. D. Hiott—you know him?

A. Yes, sir.

Q. His wife was sick in the hospital at the time?

A. I don't know.

Q. In the presence of those gentlemen did not Mr. Dantzler state in your presence these words in substance—I followed my orders—the fellow dropped the clear board or dropped the board on me, and he has killed two of us, and the rest of us are going to die?

A. No, sir, he did not.

Q. You deny that?

A. Yes, sir, and I deny Mr. Hiott being in my room that day.

Q. He didn't come in your room?

A. No, sir.

Q. Mr. Rickenbaker did?

A. Yes, sir.

Q. I want to get it so that there will be no doubt—at the time and place stated in the hospital in your room, and in your presence, did or not Mr. Dantzler state, while Dr. Rickenbaker and Mr. J. D. Hiott were there, these words in substance—I was running according to my orders, and the fellow dropped the clear board on us, and he has killed two of us, and the rest of us are going to die?

A. No, sir.

Q. You deny that Mr. Hiott was there?

A. Yes, sir.

Q. You know Mr. Hiott, of course?

[fol. 164] A. Yes, sir, I know him.

Q. I am going to read the rest of your answer to the Railroad Commission at their hearing, and ask you if that is the truth—but let me ask you this first—all of the time that Mr. Dantzler was in there he was suffering great agony until he died?

A. No, sir, he was quiet a good deal of the time and could hold a normal conversation.

Q. He was in perfactly normal condition?

A. Yes, sir, at sometimes he was perfectly at ease.

Q. That is what you say now?

A. Yes, sir.

Q. Although he was badly scalded?

A. On the face and hands and that is all I could see. He was scalded on the face and hands.

Q. You could not see any sign of his being hurt anywhere else other than the face and hands?

A. One leg was broken.

Q. You didn't hear or know of any other signs of his being hurt?

A. I couldn't tell.

Q. Didn't you say this at the Railroad Commission hearing—"After awhile I says, 'Kit, what has happened?' He says: 'Kelley, I overlooked the 723 and struck them just on the other side of Stilton down in that dip. I had a dead meet order with them here at Orangeburg and overlooked it. If you want to see the orders they are in my overall pockets.' At that time they hadn't undressed the men, and I told the nurses to take the scissors and cut the overalls off. Kit says, 'if you want to see the orders they are over there in my right hand overalls pocket.' The nurse handed me the overalls. I tore that piece out there. They were all wadded up in a wet ball and in opening them that piece came out where the hole is and I read it. So the conversation kept up and time after again he told me he was going to die; that he wanted me to wire his wife for him; his [fol. 165] wife's address was Mrs. L. K. Dantzler, 323 Walker Street, Augusta, Ga., he says 'make the message, come to Orangeburg Hospital on No. 11.' Then I asked him about his watch and money, and he said look in my right

hand jumper pocket and get my false teeth. So the nurse got the clothes and I got everything out of his pockets. He remembered how much money he had, how much change, and a receipt for money he had paid the Branchville restaurant; he told me the amount of that; told me to tear it up, *and the other* valuables I delivered to the nurse. He kept asking for help, and I would get some nurses in there and time after time he again told me he was going to die, and that he had overlooked the 723 and had struck him. I said, 'Kit, how fast were you running?' He says, 'Kelley, about 35 miles an hour.' He says 'the reverse lever broke my leg. I couldn't face the window or find it on account of the steam. I fell out of the window backwards.' I said who was with you? And he said 'Youngblood and Witherspoon. I think everybody's killed on both crews.' Says, 'It's all my fault. It is too late.' Just the words he told me. Later in the day he roused up again and the nurse gave him another shot and kept dressing his wounds during the day and he asked me again, says 'I want to throw up.' I got a nurse and after a dozen times trying I judged he threw up about a pint and it looked awful black to me. I was about ten feet from him, and I asked the nurse to bring that here and she handed it to me and I dug my fingers into it, and there must have been that much (indicating) of charcoal and cinders in it. I knew he couldn't live and I asked him if there was anything else he wanted me to do and he says 'No, have you wired for my wife?' Dr. Wimberly came in the room and Kit raised up and said 'I am gone, goodbye, I am gone,' and laid his head back on the pillow and in [fol. 166] about three minutes passed away. There was a whole lot other conversation that went on between us that I have not mentioned.' You said that?

A. That is true.

Q. Is that correct?

A. Yes, sir.

Q. You didn't tell Mr. Harley those details?

A. He didn't ask me.

Q. That is the only excuse?

A. I have not stopped.

Q. You told it all to him?

A. No, sir, but I have not stopped yet. I told what he asked me about.

Q. Who was the first doctor that got there?
A. I don't remember.
Q. You know Dr. Jeffords?
A. Yes, sir, he and other doctors were there, but I don't know which one was there first.
Q. Dr. Jeffords is the railroad surgeon at Orangeburg?
A. I don't know.
Q. Did you see Dr. Wimberly?
A. I saw him sometime that day.
Q. What about Dr. Mobley?
A. I saw him sometime that day, too.
Q. He is proprietor and surgeon at the Hospital?
A. Yes, sir.
Q. He operated on you?
A. Yes, sir.
Q. He is the man that runs the hospital?
A. Yes, sir.
Q. That is so, is it not?
A. Yes, sir, I think he runs it. He operated on me.

Dr. J. S. WIMBERLY, a witness for the defendants, sworn, testified as follows:

Direct examination.

By Mr. Harley:

I am a physician and surgeon, and have been such about [fol. 167] twenty-four years. I practice at Branchville and have practiced there for twenty-four years. In January, 1924, I was local Surgeon for the Southern Railway Company at Branchville.

Q. Were you called to the Hospital in Orangeburg to attend any cases,—among them Mr. Dantzler?
A. Yes, sir.
Q. What time did you get to the hospital?
A. About one o'clock.
Q. Who called you?
A. I was called by the family of the Witherspoons, and by the Southern Railway company.
Q. Mr. Witherspoon was the fireman?
A. Yes, sir.

Q. On this train number 483?
A. Yes, sir.
Q. And he was hurt in the wreck?
A. Yes, sir.
Q. Mr. Witherspoon was seriously injured?
A. Yes, sir.
Q. You got there about what time?
A. About one o'clock.
Q. Who did you see first among the injured?
A. Mr. Witherspoon.
Q. Was he in a room by himself?
A. No, sir.
Q. Who was in the room?
A. Mr. Ulrich and Mr. Youngblood and Mr. Witherspoon were in the room together.
Q. How long did you stay in there?
A. Not very long. About ten minutes, I guess.
Q. Was any call made to you to go to another room?
A. After I was in the hall-way talking Mr. Dantzler called me then.
Q. Tell what took place, Doctor?
A. Nothing took place at that time, with the exception that I went in and saw Mr. Danzler, and he said he was [fol. 168] suffering a good deal, and was in a good deal of pain, and I stayed in there a few minutes only at that time, and I left and went across the hallway again, and during the whole afternoon I spent at the Hospital, I had occasion to assist in the administration of Mr. Dantzler as far as I could, and during some conversation he mentioned to me the cause of the wreck. He said he overlooked the orders, and met the 723 on the main line,—it is too late now. Those were his words.
Q. That was what time?
A. About four o'clock.
Q. Who was in the room at that time?
A. Mr. J. C. Street and J. V. Watts.
Q. Was any one else there?
A. That is all.
Q. At that time?
A. Yes, sir.
Q. How long were you in the room?
A. In the whole afternoon I suppose an hour altogether, because I was looking after three rooms at the same time.

Q. Doing what you could for them?
A. Yes, sir, any assistance I could render.
Q. How many beds were in that room?
A. Two.
Q. Who ocupied those beds?
A. Mr. Dantzler and M. J. C. Street.

Cross-examination.

By Mr. Wolfe:

Q. You went primarily to see Mr. Witherspoon?
A. Yes, sir.
Q. He was fireman on the train?
A. Yes, sir.
Q. He lived at Branchville?
A. Yes, sir.
Q. You are local Surgeon of the Southern Railway Company at Branchville?
A. Yes, sir.
Q. How long have you served them?
A. Since 1907.
Q. And when you were informed of the wreck you went up to Orangeburg?
A. Yes, sir.
[fol. 169] Q. You got there about one o'clock?
A. Yes, sir.
Q. You first went to see Mr. Witherspoon?
A. Yes, sir.
Q. You had been called to see him?
A. Yes, sir, and I went there first.
Q. Later you went to see Mr. Dantzler?
A. Yes, sir.
Q. He was badly injured?
A. He certainly was.
Q. He had one leg broken?
A. Yes, sir.
Q. He was badly scalded?
A. Yes, sir.
Q. His injury was both external and internal?
A. Yes, sir.
Q. He had inhaled hot steam?
A. Yes, sir.
Q. And that scalded the throat and lungs and tissues?
A. Yes, sir.

Q. That is possible?
A. Yes.
Q. He was severely burned all over?
A. Yes, sir, all the way down.
Q. The hands were badly scalded?
A. Yes, sir, the skin left the tissues.
Q. And the finger nails came off?
A. Yes, sir.
Q. It was as bad as you have ever seen?
A. I think the fellow across the hall was burned worse.
Q. Worse than Mr. Dantzler?
A. I think so.
Q. Mr. Youngblood, you mean?
A. Yes, sir.
Q. And he died?
A. Yes, sir, just as I entered the room.
Q. Mr. Dantzler died about six o'clock?
A. Yes, sir.
Q. One having those injuries would suffer quite a good deal, wouldn't they, Doctor?
A. Yes, sir.
Q. It is very painful?
A. Yes, sir.
Q. Nothing is more painful than a burn?
A. I don't think there is.
[fol. 170] Q. They had given him opiates before you got there?
A. Yes, sir, undoubtedly.
Q. You would have done it?
A. Yes, sir.
Q. You would have given him as much as possible?
A. Yes, I would.
Q. Dr. Jeffords is the local Surgeon of the Southern Railway at Orangeburg?
A. Yes, sir.
Q. He was there?
A. Yes, sir.
Q. And being nearer there he was there before you?
A. Yes, sir.
Q. Dr. Mobley came back and forth?
A. Yes, sir.
Q. And he gave assistance?
A. Yes, all he could render.

Q. He was the owner and surgeon in charge of the Hospital?

A. Yes, sir.

Q. The trained nurses were there?

A. Yes, sir.

Q. They were doing what they could?

A. Yes, sir.

Q. After you got there it was necessary to give him hypodermics, too?

A. Yes, sir, I saw them give him two hypo's.

Q. When was that?

A. Between 5:35 and 5:40.

Q. When you got there you were satisfied that he had been given opiates?

A. Yes, sir.

Q. As much as he could stand?

A. Yes, sir.

Redirect examination.

By Mr. Harley:

Q. When he had this conversation with you about the order, was he conscious at that time?

A. Absolutely, as far as I could tell as a physician.

Q. You have known him for years?

A. Yes, sir, a good while.

Q. He knew you personally?

A. Yes, sir, and called me by name.

[fol. 171] Recross-examination.

By Mr. Wolfe:

Q. A man in that condition, Doctor Wimberly, could not be said to be in a normal condition?

A. Mentally he could.

Q. The opiates would affect his mentality?

A. Not necessarily.

Q. The mind and the operation and use of the mind depends on the whole nervous system?

A. Yes, sir, a good deal.

Q. The opiates act directly on the nervous system?

A. Yes, sir, as an alleviation.

It is agreed between counsel that the train order held by Conductor Youngblood, and the train order held by Engineer Dantzler, have been offered in evidence.

Mr. Harley: That is our case.

Testimony on Behalf of the Plaintiff in Reply

Dr. O. D. Hammond, a witness for the plaintiff in reply, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I live at Blackville, and am 44 years of age. I have been a physician and surgeon since 1905, and have been engaged actively all of that time.

Q. Have you treated people suffering with burns and injuries in your practice?

A. I have.

Q. I want to ask you this—stating a hypothetical case to you as follows—suppose a person has been in a head-on collision between two locomotives, suffering a violent shock and serious concussions therefrom, and that such person is [fol. 172] fairly scalded to such an extent that much of the skin peals off, and is also scalded and bruised inwardly to a great degree, and that such person is carried to a hospital, and when there cried out in great agony, with his hands having burned almost off, and he kept crying for God's sake do something for me—I am dying—and several nurses came to him—then after awhile he asks what has happened, and continues to suffer from those injuries, and also has a broken leg received in the wreck, and was given more anodynes from time to time to relieve his pain and suffering—what would you say as to this man's mind—could it have been in a reasonably normal condition and clear enough to have made a statement of any value?

A. Not in my opinion.

Q. Now, Doctor, pain comes directly out of the nervous system, does it not?

A. Yes, sir.

Q. The mind and functions of the mind are controlled by the nervous system?

A. It is the nervous system itself.

Q. The purpose of giving an anodyne when a person is suffering pain is to quiet the nervous system so that it will not be susceptible to pain?

A. Yes, sir.

Q. And, therefore, could it be said that a man's mind is normal in the condition that I have described in my question, and having been given necessarily, as any good physician or surgeon would do, opiates in considerable quantities and continuously, that he would grow weaker in body and mind until he died?

A. Yes, sir, and of course it would depend on the amount of anodynes.

Q. A good physician would keep on giving it as much as the patient could stand?

A. To make him comfortable, yes, sir.

Q. And finally a patient would go into a state of coma until relieved by death?

A. Yes, sir.

[fol. 173] Q. Coma has been defined as that great blessing of nature when there is no hope for a man to recover—it throws it about him like a curtain to keep him from suffering?

A. Yes, sir, it is a profound sleep.

Q. And he does not know anything?

A. No, sir.

Q. And then he passes out?

A. Yes, sir.

Q. The statement of the condition of a man, such as I have described, and having been given opiates sufficient to quiet him, would any statement that he made be of any great value as evidence in your opinion?

A. Not any at all.

Cross-examination.

By Mr. Blatt:

Q. You didn't see Mr. Dantzler yourself?

A. No, sir.

Q. You know nothing of his condition of your own knowledge, do you, Doctor?

A. No, sir.

Q. Suppose you found a man severely burned and brought to a hospital about ten o'clock in the morning, and after put in the hospital he is given hypodermics, and in the course of the conversation of five or six hours he would tell you the exact amount of money he had in his pocket, and that he had certain letters and papers, and tell you what to do with them, and further that he had a train order which he had overlooked, and tell you what to do with it, and further that he recognized another patient in the room, and called him by his first name, and later recognized the doctor from his home town—would you or not say that that is evidence of some value?

A. Yes, sir, at that time his mind was clear enough.

Q. As a matter of fact, when a man makes a statement, and he is in that serious condition—it is likely that he will tell the truth?

A. Yes, sir, generally.

Redirect examination.

By Mr. Brown:

[fol. 174] Q. The chances are, you say, that his statement would not be entitled to much credence?

A. If he had much anodynes.

Q. What would you say if he made statements both ways as to a matter,—what about the credence to be given to any statement?

A. It would be of no value at all.

F. N. Rickenbacker, a witness for the plaintiff in reply, sworn, testified as follows:

Direct examination.

By Mr. Wolfe:

I was born and raised in Orangeburg County, and am 62 years of age. I served as Coroner of Orangeburg County for sixteen years. By profession I was a dentist until I lost my arm. I now live in Columbia. I was

Coroner in 1924 when Mr. Dantzler and Mr. Youngblood died, and I held the inquest.

Q. Did you go down to the hospital at Orangeburg after these men were in this collision?

A. Yes, sir, about eleven o'clock that morning I went there.

Q. You went there on the morning of the wreck?

A. Yes, sir.

Q. Who asked you to go there?

A. Col. Adam Moss, Attorney for the Company.

Q. That is Col. Adam H. Moss?

A. Yes, sir.

Q. He is local Counsel for the Southern Railway at Orangeburg, and was at that time?

A. Yes, sir.

Q. What did Col. Moss get you to go to the hospital to do?

A. To get a train order from the engineer.

Q. You went down?

A. Yes, sir.

Q. You were admitted to the hospital?

A. Yes, sir.

Q. Were you shown up to the room?

A. Yes, sir, I first asked for the order from the Head Nurse and she said she had given them to Mr. Street, and [fol. 175] that he had them, and I went up to Mr. Street's room to see about them.

Q. You know Callie Street?

A. Yes, sir.

Q. Was he in the room when you went up there?

A. Yes, sir.

Q. Mr. Dantzler was in there?

A. Yes, sir.

Q. In the bed?

A. Yes, sir, wrapped in a sheet.

Q. Did you know Mr. Dantzler before that?

A. No, sir.

Q. You knew Callie Street?

A. Yes, sir.

Q. I don't guess you knew that he was there until they told you that day?

A. No, sir, I did not.

Q. When you went and asked Mr. Street for the order did he give it to you?

A. Yes, sir.

Q. Later you carried it and gave it to Mr. Moss?

A. Yes, sir.

Q. That was how the railroad company got hold of that order, I believe?

A. Yes, sir.

Q. They got it through you?

A. They did, yes, sir.

Q. You stayed in there for quite a little bit, I presume?

A. When I went for the order?

Q. Yes.

A. Twenty or thirty minutes, I guess.

Q. Was Mr. Street in bed when you got there?

A. He had on his pants.

Q. Was he sitting up?

A. Yes, sir, he was up.

Q. You know Mr. J. D. Hiott there (indicating to the witness)?

A. Yes, sir.

Q. He was in the room?

A. Yes, sir.

Q. He went with you?

[fol. 176] A. I went by the car from up street with him.

Q. Did Mr. Hiott go up in the room?

A. Yes, sir.

Q. He is a Branchville man, too?

A. Yes, sir.

Q. Where Mr. Youngblood and Mr. Dantzler were living?

A. Yes, sir.

Q. Mr. Hiott carried you in his car from the Court House down to the Hospital?

A. Yes, sir.

Q. Did he go up in the room?

A. Yes, sir.

Q. Was he in the room while you were in there?

A. Yes, sir.

Q. What condition was Mr. Dantzler in when you were there?

A. In a fearful condition.

Q. Was he in great agony?

A. Yes, sir, and pain.
Q. Did he make exclamations of pain?
A. Yes, sir.
Q. As a dentist, you have used opiates, I presume?
A. A little.
Q. The men had been given opiates?
A. Yes, sir, morphine.
Q. You could tell that?
A. Yes, sir.
Q. And notwithstanding that, Mr. Dantzler was in great pain?
A. Yes, sir.

Cross-examination.

By Mr. Blatt:

Q. How long has it been since you practiced Dentistry?
A. About thirty years.
Q. Since that time, have you fooled with drugs, etc.?
A. No, sir.
Q. You are not Coroner of Orangeburg County now?
A. No, sir.
Q. You live in Columbia?
A. Yes, sir.
Q. You were in the hospital room where Mr. Dantzler [fol. 177] was not more than a half an hour?
A. About that time.
Q. You were—you are positive that it was on the day of the accident that you were at the hospital?
A. Yes, sir, about eleven o'clock in the morning.
Q. You were there shortly after the accident?
A. Not very long.
Q. Did you talk with Mr. Dantzler yourself?
A. No, sir.
Q. What did you stay there for?
A. I was looking after patients.
Q. You went there for what?
A. To get that order.
Q. How long after you got in the room before you got the order that you had gone after?
A. About five minutes.

Q. The other twenty-five minutes you stayed there to administer and talk with the patients?

A. No, sir, not to administer.

Q. What were you doing there?

A. Watching the people suffering.

Q. That didn't give you any pleasure?

A. No, sir, of course not.

Q. You stayed there thirty minutes?

A. Twenty or thirty minutes.

Q. You went back down once?

A. Yes, sir.

Q. You were not there when Dr. Wimberly came in?

A. No, sir, I was not.

Q. How many beds were in the room?

A. Three, I think.

Q. Who was in them?

A. Mr. Dantzler and I think Mr. Witherspoon was in [fol. 178] one, but I am not sure about that.

Q. And Mr. Street was in one?

A. He was up then but I guess he did have one.

Q. You heard Dr. Wimberly say that Mr. Witherspoon was across the hall?

A. They could have moved him.

Q. He was in the room when you were there that morning?

A. One of the burned men was, but I am not sure.

Mr. Wolfe: That completes our reply then.

DEFENDANTS MOTION TO DIRECT A VERDICT

The defendants move for direction of a verdict in their favor upon the following grounds:

1. That the only reasonable inference to be drawn from the entire testimony is that the death of the plaintiff's intestate was caused solely by his own negligence, recklessness and wilfulness.

2. That the entire testimony is susceptible of but one reasonable inference, namely, that the danger of the situation resulting in the death of plaintiff's intestate was so obvious that an ordinarily careful person would have observed and

appreciated the same, and hence plaintiff's intestate assumed the risks thereof.

3. That the only reasonable inference to be drawn from the entire testimony is that the proximate cause of the injuries resulting in the death of plaintiff's intestate was the [fol. 179] intestate's own violation of a positive meet order, which he had in his possession, not fulfilled, superseded or annulled.

4. That there is no evidence of actionable negligence on the part of the defendants.

5. That there is no evidence as to pecuniary loss sustained by the beneficiaries named in the complaint, as the result of the death of plaintiff's intestate, and hence no evidence upon which to base an award of damages.

The Court: I will have to refuse the motion, Mr. Harley.

GROUNDS OF DEFENDANTS' MOTION FOR A NEW TRIAL

1. There is no testimony, much less a preponderance of the testimony, showing negligence of the defendants as alleged in the complaint.

2. The evidence shows that the injuries resulting in the death of plaintiff's intestate were caused by the intestate's own negligence in violating a positive meet order which he had in his possession, which negligence of the plaintiff's intestate was the proximate cause of his death, and without which negligence on the part of plaintiff's intestate the accident resulting in his death would not have happened.

3. The entire evidence shows that the injureis resulting in the death of plaintiff's intestate caused by the intestate's own negligence in violating, among other rules of the de- [fol. 180] fendants, rule number 88, in that plaintiff's intestate failed to drive his engine into the siding at Orangeburg, the meeting point, and await the arrival of extra 723, as he was required to do in accordance with the said rule and the order under which he was running his engine, which negligence on the part of plaintiff's intestate was the proximate cause of his death, and without which negligence the

accident resulting in the death of plaintiff's intestate would not have happened.

4. That there was no evidence in the case as to the pecuniary value of the intestate's customary contributions to the support of the beneficiaries named in the complaint, nor that said beneficiaries had a reasonable expectation of pecuniary benefit from a continuance of decedent's life; and hence no evidence on which to base an award of damages in the event the jury found that the plaintiff was entitled to a recovery.

5. That the verdict is grossly excessive, and contrary to the great weight of the evidence.

The Court: The motion is refused.

Exhibits

Consist of Extra Train Number 683

The following is the consist of extra train number 683, which became disabled at Fort Motte, S. C., on morning of January 3, 1924; said consist showing that said train contained twenty-four cars of freight destined from points in South Carolina to points outside of South Carolina:

[fol. 181]

Car initial	No.	Kind	Contained	From	To
Southern	X-2599	Cab			
"	154278	Coal	Iron	Charleston, S. C	Chattanooga, Tenn.
"	158570	Box	Mdse	"	Spencer, N. C., Trans
"	150214	"	"	"	Columbia, S. C.
"	17106	"	"	"	Hayne, S. C., Trans
"	253922	"	"	"	Blythewood, S. C. & W.
Sou. Pac.	36847	"	"	"	Peak, S. C. & Way
Southern	265808	"	"	"	S. U. R. R.
P. M.	18285	"	"	"	Belton, S. C. & Way
N. Y. C.	220069	"	"	"	Johnston, S. C.
Southern	265250	"	Soda	"	Jonesville, S. C.
L. A.	2062	"	Sweepings	"	Shoals Jct., S. C.
I. C.	331380	"	"	"	Shoals Jct., S. C.
C. A.	36854	"	Soda	"	Union, S. C.
Southern	302670	"	"	"	Gaffney, S. C.
"	304657	"	Mdse	"	Columbia, S. C.
A. C. L.	44166	"	Paper	"	Birmingham, Ala.
Southern	15978	"	Mdse	"	Memphis, Tenn.
"	265383	"	"	"	Atlanta, Ga.
"	122827	"	"	"	Chattanooga, Tenn.
"	304438	"	"	"	Little Rock, Ark.
"	26752	"	"	"	Meridian, Miss.
"	260074	"	"	"	Selma, Ala.

Southern	150851	"	"	"	Ft. Smith, Ark.
"	152343	"	"	"	Memphis, Tenn.
"	150619	"	"	"	Birmingham, Ala.
"	153954	"	"	"	Knoxville, Tenn.
"	89728	"	"	"	Nashville, Tenn.
"	150135	"	"	"	Spartanburg, S. C.
"	15191	"	"	"	Wateree, S. C. & Way
"	265811	"	Cabbage	"	Columbia, S. C.
"	27179	"	"	"	Roanoke, Va.
"	28125	"	"	"	Winston-Salem, N. C.
"	35635	"	"	"	Concord, N. C.
S. O. R. D	7911	"	"	"	West Phila., Pa.
Southern	122987	"	"	"	Reidsville, N. C.
S. O. R. D.	7239	"	"	"	New York, N. Y.
Southern	28608	"	"	"	Greensboro, N. C.
"	27806	"	"	"	Charlotte, N. C.
N. C.	69994	Flat	Logs	Branchville, S. C	Cayce, S. C.
Southern	160629	Box	Mdse	"	Columbia, S. C. & Way
"	305194	"	Sweepings	"	Bessemer City, N. C.
"	116350	Flat	Lumber	"	Pittsburgh, Pa.
D. L. & S.	32244	Box	"	"	Columbia, S. C.
B. O.	75042	"	"	"	Williamston, S. C.
N. Y. C	48309	"	"	"	Marion, S. C.
Southern	415644	Flat	"	"	Pleasantville, S. C.
"	121500	Box	Phosphate	"	Greenwood, S. C.
"	415573	Flat	Poles	"	Anderson, S. C.

[fol. 182] Train Order Number 18

Train order number 18, dated January 3, 1924, addressed to Engine 483, Branchville, S. C., is as follows:

"Extra 723 get this order meet extra 483 east at Orangeburg Engine 483 run extra Branchville to Andrews";

said order having been signed for by Conductor Youngblood, at Branchville, S. C., at 8:32 A. M., January 3, 1924, and copies of said order being found on the bodies of Conductor Youngblood and Engineer Dantzler when they were extricated from the wreck.

Order Number 18

Order number 18, sent at 7:58 A. M., January 3, 1924, the same being copied in the train-order book used at Charleston, S. C., is as follows:

"Jd Exa 723 East & Opr 31
Bv Eng 483 31
Exa 723 East get this order & meet Ex 483 West at Orgburg Eng 483 run extra Bchville to Andrews."

Clearance Card

3-6-23 3500 M D 3121 Form 603

Southern Railway System

Clearance Card

Branchville, S. C., 1-3, 1924.

Conductor and Engineer No. X-483.
Orders for your train are: Form "19" None
Form "31" 1-3-18-32-
Block is O. K.
8:31 AM. Von Lehe Operator
C Y'blood, Conductor. —— ——, Engineer.

[fol. 183] If no orders For "19" or "31," endorse "None" in spaces provided for order numbers.

Conductors must sign orders (Form 31) before accepting from Operator; also sign this receipt, and obtain receipt from Engineer when orders are delivered to him. Conductors and Engineers must each have copy, and see that train is correctly designated in above form. When a train has been stopped by semaphore signal, whether for orders, block, or both, this card will be issued in lieu of giving a clear semaphore signal. This card must be made in triplicate.

RECEIPT FOR NEW RULE BOOK

Receipt signed by L. K. Dantzler, Engineer, dated March 25, 1923, acknowledging receipt of new rule book number 14341, is as follows:

Charleston, S. C., Date: 3-27, 1923.

T. D. Beard, Trainmaster, Charleston, S. C.; J. S. Walker, Jr., Trainmaster, Rock Hill, S. C.:

I have this date received New Rule Book Number 14341 and will Read and Study the rules contained therein, and have this date returned old rule book Number 27217.

(Signed) L. K. Dantzler.

PLATS

Plat made by E. G. Kittles, dated August 26, 1924, showing tracks, station and surroundings of Southern Railway Company at Orangeburg, S. C., filed separately.

Plat made by E. G. Kittles, dated August 26, 1924, showing tracks, right of way and buildings of Southern Railway Company at Stilton, S. C., filed separately.

[fol. 184] TIME TABLE

The following foot-note appears at the bottom of the Time Table of Southern Railway System on Charleston Division, effective August 1, 1923:

"All regular trains from Columbia to West End are superior to trains of the same class moving in opposite direction, in accordance with General Rule 72."

RULES

From preface to rule book under heading "General Notice":

"Safety is of the first importance in the discharge of duty.

"Obedience to the rules is essential to safety."

From "General Rules," page 6 of Rule Book:

"B. Employes must be conversant with any obey the rules and special instructions. If in doubt as to their meaning they must apply to proper authority for an explanation."

From "Definitions," page 7 of Rule Book:

Extra Train.—a train not authorized by a time-table schedule. It may be designated as—

Extra—for any extra train, except work extra;

Work extra—for work train extra.

Superior Train.—A train having precedence over another train.

Train of Superior Direction.—A train given precedence in the direction specified by time-table as between opposing trains of the same class.

From "Definitions," page 8 of Rule Book:

Siding.—A track auxiliary to the main track for meeting or passing trains.

[fol. 185] Fixed Signal.—A signal of fixed location indicating a condition affecting the movement of a train.

NOTE.—The definition of a "Fixed Signal" covers such signals as slow boards, stop boards, yard limits, switch, train order, block, interlocking, semaphore, disc, ball or other means of displaying indications that govern the movement of a train.

Rules 71, 72 and 73, Page 27 of Rule Book

71. A train is superior to another train by right, class or direction.

Right is conferred by train order; class and direction by time-table.

Right is superior to class or direction.

Direction is superior as between trains of the same class.

72. Trains of the first class are superior to those of the second; trains of the second class are superior to those of the third; and so on.

Trains in the direction specified by the time-table are superior to trains of the same class in the opposite direction.

73. Extra trains are inferior to regular trains.

Rules 83 and 87, Page 28 of Rule Book

83. A train must not leave its initial station on any division, or a junction, or pass from double to single track, until it has been ascertained whether all trains due, which are superior, or of the same class, have arrived or left.

Stations at which train registers are located may be designated by time-table.

87. An inferior train must keep out of the way of op- [fol. 186] posing superior trains and failing to clear the main track by the time required by rule must be protected as prescribed by Rule 99.

Extra trains must clear the time of opposing regular trains not less than five minutes unless otherwise provided, and will be governed by train orders with respect to opposing extra trains.

Rules 88 and 90, Page 29 of Rule Book

88. At meeting points between trains of the same class, the inferior train must clear the main track before the leaving time of the superior train.

At meeting points between extra trains, the train in the inferior time-table direction must take the siding unless otherwise provided.

Trains must pull into the siding when practicable; if necessary to back in, the train must first be protected as prescribed by Rule 99, unless otherwise provided.

90. Trains must stop at schedule meeting points, if the trains to be met is of the same class unless the switch is right and the track clear.

When the expected train of the same class is not found at the schedule meeting point, the superior train must approach all sidings prepared to stop, unless the expected train is met.

Trains must stop clear of the switch used by the train to be met in going on the siding; at the end of double track unless otherwise provided, the double track junction switch is the designated switch.

The Conductor must give signal 16 (*m*) on a passenger train or signal 12 (*b*) on other trains which must be answered by the engineman by signal 14 (*g*) at least one mile before reaching a schedule meeting or passing point with a train of the same or superior class, or a point where by [fol. 187] train order the train is to meet or wait for an opposing train. Should the conductor or the engineman fail to give the prescribed signals the train must be stopped.

On any train the engine number is an additional but not a complete identification of the train.

RULE 93, PAGE 30 OF RULE BOOK

93. Within yard limits the main track may be used without protecting against second and inferior class trains. Second and inferior class and extra trains or engines must move within yard limits prepared to stop unless the main track is seen or known to be clear. When the view is obstructed additional precautions must be taken. In case of accident the responsibility will rest with the approaching train.

NOTE.—Yard limits are indicated by sign boards reading "Yard Limit," and the locations are also shown for each division in the current time table.

RULE 97, PAGE 31 OF RULE BOOK

97. Extra trains must not be run without train orders.

RULE 105, PAGE 34 OF RULE BOOK

105. Both the conductor and the engineman are responsible for the safety of the train and the observance of the rules, and, under conditions not provided for by the rules, must take every precaution for protection. When two or more engines are attached to a train each engineman must have copy of the train orders and each will be responsible for observance of the rules.

[fol. 188] RULE 201, PAGE 36 OF RULE BOOK

201. For movements not provided for by time-table, train orders will be issued by authority and over the signature of the chief dispatcher. They must contain neither information nor instruction not essential to such movements.

They must be brief and clear; in the prescribed forms when practicable; and without erasure, alteration or interlineation.

Figures in train orders must not be surrounded by brackets, circles or other characters.

Train orders must be written by hand and not by typewriter.

RULE 208, PAGES 37 AND 38 OF RULE BOOK

208. A train order to be sent to two or more offices must be transmitted simultaneously to as many of them as practicable. When not sent simultaneously to all, the order must be sent first to the superior train.

The several addresses must be in the order of superiority of trains, each office taking its proper address, and when practicable must include the operator at the meeting or waiting point.

Copies of the order addressed to the operator at the meeting or waiting point must be delivered to the trains affected until all have arrived from one direction.

A train order must not be sent to a superior train at the meeting point if it can be avoided. When an order is so sent, the fact will be stated in the order and special precautions must be taken to insure safety.

[fol. 189] RULE 210, PAGES 38 AND 39 OF RULE BOOK

210. When a "31" train order has been transmitted, operator must, unless otherwise directed, repeat it at once from the manifold copy in the succession in which the several offices have been addressed, and then write the time of repetition on the order. Each operator receiving the order must observe whether the others repeat correctly, and must at once call attention to any discrepancy.

Those to whom the order is addressed, except enginemen, must then sign it, and the operator will send their signatures preceded by the number of the order to the train dispatcher. The response "complete," and the time, with the initials of the chief dispatcher, will then be given by the train dispatcher. Each operator receiving this response will then write on each copy the word "complete," the time, and his last name in full, and then deliver a copy to each person addressed, except enginemen. The copy for each engineman must be delivered to him personally by the conductor who will take receipt on Form 603 for orders delivered. The engineman must read the orders aloud to the conductor.

A pilot will sign "31" train orders and personally deliver them to the conductor and engineman.

Enginemen must show train orders to firemen and when practicable to forward trainmen. Conductors must show train orders when practicable to trainmen. Firemen and trainmen must, when necessary, call attention of conductors and enginemen to the instructions in the orders.

[fol. 190] RULES 219 AND 220, PAGES 41 AND 42 OF RULE BOOK

219. An operator must not repeat or give the "X" response to a train order for a train which has been cleared or of which the engine has passed his train-order signal

until he has obtained the signatures of the conductor and engineman to the order.

220. Train orders once in effect continue so until fulfilled, superseded or annulled. Any part of an order specifying a particular movement may be either superseded or annulled.

Orders held by or issued for or any part of an order relating to a regular train become void when such train loses both right and schedule as prescribed by rules 4 and 82, or is annulled.

When a conductor or engineman, or both, is relieved before the completion of a trip, all train orders and instructions held must be delivered to the relieving conductor or engineman. Such orders or instructions must be compared by the conductor and engineman before proceeding.

RULE 221, PAGE 42 OF RULE BOOK

221. A fixed signal must be used at each train order office, which shall indicate "stop" when there is an operator on duty except when changed to indicate "19" train order or to "proceed" to allow a train to pass for which there are no orders. It must not be changed to "proceed" for a train while a train order remains undelivered for a train in that direction. A train must not pass a train order signal while "stop" or "approach with caution" is indicated without receiving clearance card Form 603 (and train [fol. 191] orders, if any), except to do station work or to reach entrance to the siding under proper protection; in such cases it must not proceed or again occupy the main track without receiving clearance card Form 603 or Form 886.

When the signal is changed to "proceed" to allow a train to pass, it must be in full view of engineman and must be returned to "stop" as soon as train has passed. It must be fastened at "proceed" only when no operator is on duty.

Indications of train order signal apply only to main track, and trains passing the signal while on siding or yard track must obtain clearance card before proceeding.

Operators must have the proper appliances for hand signalling ready for immediate use if the fixed signal should fail to work properly. If a signal is not displayed at a night office, trains which have not been notified must stop and ascertain the cause, and report the facts to the chief dispatcher from the next available point of communication.

Where the semaphore is used, the governing arm is displayed to the right of the mast as seen from an approaching train.

On double track the train order signal governing a train when moving with the current of traffic, will govern it when moving on a main track against the current of traffic.

"Approach with Caution" signal must not be displayed if the order requires the train to stop at that station; in such case Stop must be displayed.

At Stations where a fixed signal is not provided a red flag by day and in addition a red light by night will be displayed when trains are to be stopped for train orders.

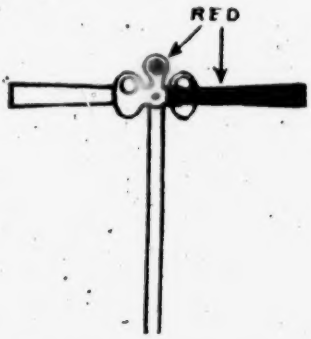
(Here follows reproduction of side folio 192)

FROM PAGE 46 OF RULE BOOK

TWO POSITION TRAIN ORDER SIGNALS

The following signals will appear where conditions require their use

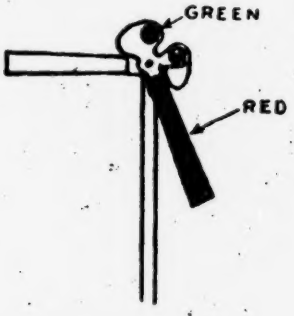
221 e



INDICATION —STOP.
NAME—STOP-SIGNAL.

Note.—Delivery of "19" order may be indicated by display in addition of yellow signal by the operator.

221 f



INDICATION—PROCEED.
NAME—CLEAR-SIGNAL.

[fol. 193] FORMS OF TRAIN ORDERS

Page 48 of Rule Book

A

Fixing Meeting Points for Opposing Trains

(1.) No 1 one eng 111 meet No 2 two eng 112 at B No 3 three eng 113 meet Second No 4 four eng 114 at B.
No 5 five eng 115 meet Extra 116 east at B.
Extra 117 north meet Extra 118 south at B.

(2.) No 2 two eng 112 and Second No 4 four eng 114 meet No 1 one eng 111 and No 3 three eng 113 at C and Extra 123 west at D (and so on). No 1 one eng 111 meet No 2 two eng 112 at B Second No 4 four eng 114 at C and Extra 127 east at D.

Trains receiving these orders will run with respect to each other to the destignated points and there meet in the manner prescribed by the rules.

Page 54 of Rule Book

G

Extra Trains

(1.) Eng 99 run extra A to F.

(2.) Eng 99 run extra A to F and return to C.

The extra must go to F before returning to C.

FORM 603, PAGE 62 OF RULE BOOK

Form 603

Southern Railway System

Clearance Card

.....192

Orders for your train are: For "19" No's..... For "31" No's.....

[fol. 194]

Conductor / Engineman } No. ..... Block is .....

.....

..... M. ..... Operator

..... Conductor Engineman

When a proceed signal cannot be given this form must be made in triplicate and two copies delivered to conductor who must see that his train is correctly designated. Form must be endorsed with one or more of the following: "None," "Clear," "Obstructed by ——," "Line has failed, proceed with caution," "Route is set, proceed," "Signal has failed, proceed" and if any train orders, the numbers. Enginemen receiving this card endorsed "Line has failed, proceed with caution" must deliver it to the signalman at the next block station.

RULE 282, PAGE 64 OF RULE BOOK

282. The movement of trains will be surpervised by the chief dispatcher, who will issue instructions to the signalmen or operators.

RULE 513, PAGE 108 OF RULE BOOK

513. Approaching meeting points made by train order, the train to take siding may, after stopping, pass the stop signal immediately preceding the meeting point and proceed under control to the entrance switch of siding.

RULE 890, PAGE 130 OF RULE BOOK

Train Dispatchers

890. Train dispatchers will report to chief dispatcher.

[fol. 195] RULES 891, 1065 AND 1066, PAGE 131 OF RULE BOOK

Train Dispatchers

891. They must issue train orders over the signature of the chief dispatcher and in accordance with the rules. They must take additional precautions when necessary for the safe movement of trains.

When Signals for a following section are displayed from or taken down at a non-register station, proper notice must be given other trains affected.

Maintenance of Way Department

Roadmasters must not permit encroachment upon, or occupancy of any portion of the property, except by proper authority, and shall report such cases to the superintendent.

Supervisors must know that foremen are provided with current time tables, rules, circulars and orders, affecting train service and that they comply with them.

Employes must be prepared for trains at any time as notice is not given in advance of extra trains; they must observe passing trains for signals displayed.

Employees authorized to use lever, motor or push cars must limit their use to authorized service and must not permit any one except employes in the performance of duty to use them.

Telegraph and Telephone Operators

1065. Telegraph and Telephone Operators will report to the Chief Dispatcher, except in relay offices they will report to the Manager.

1066. They will obey the instructions of the station agent with respect to any duties required of them in connection [fol. 196] with station work, but must not allow such duties to interfere with their duties as operators. The telegraph and telephone service must be regarded as of the first importance.

RULES 1067 AND 1068, PAGE 132 OF RULE BOOK

Telegraph and Telephone Operators

1067. They must be constantly on duty during the hours of service as required or assigned by the chief dispatcher

and must not close their office without permission of the train dispatcher.

1068. They must make written transfer to the relieving operator of undelivered train orders or unfinished business.

RULE 1137, PAGE 133 OF RULE BOOK

Conductors

1137. They must recognize the joint responsibility of enginemen for the observance of the rules and must consult with them in regard to the safe movement of the train. (See Rule 1293.)

RULE 1293, PAGE 147 OF RULE BOOK

Enginemen

1293. They are jointly responsible with the conductor for the safe movement of the train and must decline to obey instructions which involve violation of the rules, or peril to persons or property. They are solely responsible for the observance of and compliance with the indications given by fixed signals, flagmen's signals or other signals affecting head end forward train movement; the responsi- [fol. 197] bility of the conductor in such cases is to secure compliance to the extent of his ability with the indications of the signals after they come into his view and according to the prescribed method of operation of fixed signals.

STIPULATION AS TO RULE BOOK

It is stipulated and agreed by counsel that the rule book effective August 1st, 1923, is offered in evidence, and it is agreed that counsel be permitted to use or to refer to any rule therein that is or may be deemed pertinent and useful to them in the case.

IN COURT OF COMMON PLEAS OF BARNWELL COUNTY

Within due time the defendants served notice of intention to appeal to the Supreme Court of South Carolina, and now ask this Court to reverse the verdict and judgment herein upon the following

EXCEPTIONS

1. Because his Honor erred, it is respectfully submitted, in overruling the motion for direction of verdict in favor of defendants, upon the grounds:

(a) That the only reasonable inference to be drawn from the entire testimony is that the death of the plaintiff's intestate was caused solely by his own negligence, recklessness and wilfulness.

(b) That the entire testimony is susceptible of but one reasonable inference, namely, that the danger of the situation resulting in the death of plaintiff's intestate was so obvious that an ordinarily careful person would have observed and appreciated the same, and hence plaintiff's intestate assumed the risks thereof.

[fol. 198] (c) That the only reasonable inference to be drawn from the entire testimony is that the proximate cause of the injuries resulting in the death of plaintiff's intestate was the intestate's own violation of a positive meet order, which he had in his possession, not fulfilled, superseded or annulled.

(d) That there is no evidence of actionable negligence on the part of the defendants.

(e) That there is no evidence as to pecuniary loss sustained by the beneficiaries named in the complaint as the result of the death of plaintiff's intestate, and hence no evidence upon which to base an award of damages.

2. Because his Honor erred, it is respectfully submitted, in refusing defendants' motion for a new trial; whereas he should have granted the motion upon the grounds and for the reasons urged in support thereof, as follows:

(a) There is no testimony, much less a preponderance of the testimony, showing negligence of the defendants as alleged in the complaint.

(b) The evvidence shows that the injuries resulting in the death of plaintiff's intestate were caused by the intestate's own negligence in violating a positive meet order which he had in his possession, which negligence of the plaintiff's intestate was the proximate cause of his death, and without which negligence on the part of plaintiff's inteste the accident resulting in his death would not have happened.

[fol. 199] (c) The entire evidence shows that the injuries resulting in the death of plaintiff's intestate were caused by intestate's own negligence in violating, among other rules of the defendants, rule number 88, in that plaintiff's intestate failed to drive his engine into the siding at Orangeburg, the meeting point, and await the arrival of extra 723, as he was required to do in accordance with the said rule and the order under which he was running his engine, which negligence on the part of plaintiff's intestate was the proximate cause of his death, and without which negligence the accident resulting in the death of plaintiff's intestate would not have happened.

(d) That there was no evidence in the case as to the pecuniary value of the intestate's customary contributions to the support of the beneficiaries named in the complaint, nor that said beneficiaries had a reasonable expectation of pecuniary benefit from a continuance of decedent's life, and hence no evidence on which to base an award of damages in the event the jury found that the plaintiff was entitled to a recovery.

(e) That the verdict is grossly excessive, and contrary to the great weight of the evidence.

IN COURT OF COMMON PLEAS OF BARNWELL COUNTY

STIPULATION AS TO CASE, ETC.

It is hereby agreed that the foregoing shall constitute the Case and Exceptions on appeal to the Supreme Court of South Carolina in the cause herein, and that the same, when printed and filed, shall constitute the return herein. It is further agreed that all original exhibits herein, to-[fol. 200] gether with a copy of the rule book of the South-

ern Railway Company effective August 1, 1923, are filed with the Supreme Court as a part of the case for appeal, to be used by the Court or either counsel as desired in the hearing and determination of the appeal. It is further agreed that the semaphore on the line of the Southern Railway Company at Orangeburg is correctly represented by the pictures appearing on page 46 of the rule book.

Harley & Blatt, Attorneys for Appellants. Wolfe & Wolfe, R. C. Holman, Brown & Bush, Attorneys for Respondent.

[fol. 201] SUPREME COURT OF SOUTH CAROLINA

Case No. 121

MARY ELIZABETH DANTZLER, as Administratrix of the Estate of Lawrence Keitt Dantzler, Deceased, Respondent,

v.

SOUTHERN RAILWAY COMPANY and SOUTHERN RAILWAY—CAROLINA DIVISION, Appellants

Appeal from Barnwell County T. S. Sease, Judge

Affirmed

Harley & Blatt, of Barnwell, and Frank G. Tompkins, of Columbia, for appellants.

Wolfe & Wolfe, of Orangeburg, R. C. Holman and Brown & Bush, all of Barnwell, for respondent.

OPINION—Filed Dec. 14, 1931

STABLER, J.:

This is a companion case to Youngblood v. Southern Railway Company and Southern Railway—Carolina Division, now in process of decision. The action was commenced in May, 1924, by the plaintiff, as administratrix of the estate of Lawrence Keitt Dantzler, deceased for damages for the alleged wrongful death of her intestate. On January 3, 1924, Dantzler, who was in the employ of the defendants as a locomotive engineer, was operating, with Youngblood as conductor, one of the defendants' trains,

which met in a head-on collision, near Stilton, in Orangeburg County, another of defendants' trains. In the wreck both Dantzler and Youngblood received injuries from which they shortly afterwards died.

This case was tried for the first time at the June, 1927, term of the Court of Common Pleas for Barnwell County. The jury found for the plaintiff $33,875.00, but on appeal to this Court, for the reasons stated in the Court's decision, the judgment was reversed and the case remanded for a new trial. 152 S. C. 287, 149 S. E. 750. It was tried again in September, 1930, the jury finding for the plaintiff $12,500.00. Motions for a directed verdict and for a new trial were duly made by the defendants and overruled by the Court.

The questions presented by this appeal are the same as those involved in the appeal in the Youngblood case. It is conceded that the evidence in the two cases is substantially the same. What we have said, therefore, in the Youngblood case, disposes of the questions here raised.

All exceptions are overruled and the judgment below is affirmed.

Blease, C. J., Carter and Bonham, JJ., concur. Cothran, J., did not participate on account of illness.

[fols. 202 & 203] Bond on petition for certiorari for $500.00 approved; omitted in printing.

[fol. 204] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR STAY OF EXECUTION

To the Honorable Jesse F. Carter, Associate Justice of the Supreme Court of South Carolina:

The petition of Southern Railway Company and Southern Railway-Carolina Division respectfully shows:

1. That the final judgment of the Supreme Court in South Carolina in the above stated cause against your

petitioners was rendered on December 14th, 1931, by an opinion affirming the judgment of the Court below.

2. That the said final judgment is subject to review by the Supreme Court of the United States on Writ of Certiorari, upon the grounds that the said final judgment denies to your petitioners rights, privileges and immunities granted to them under the Constitution of the United States and deprives them of their property without due process of law, and denies to them the equal protection of the laws under the Constitution of the State of South Carolina and of the United States.

3. Your petitioners further present that the cause of action herein arises solely under the Act of Congress and Acts amendatory thereto commonly known as the Federal Employers' Liability Act, under which all questions of liability are finally determinable only by the Supreme Court of the United States, which has ultimate jurisdiction of questions of law and fact arising in such case. Chicago M. & St. P. R. Co. v. Coogan, 271 U. S. 472, 70 L. Ed. 1041.

[fol. 205] 4. That your petitioners, being the parties aggrieved by the aforesaid judgment, desire to apply for a Writ of Certiorari from the Supreme Court of the United States, and in order to make such application and obtain such Writ it is necessary that the execution and enforcement of such judgment be stayed for a reasonable time.

5. That your petitioners stand ready to give such security for the protection of the plaintiff in the above stated cause as may be necessary or proper.

Wherefore your petitioners pray that the execution and enforcement of the aforesaid judgment be stayed pursuant to the Acts of Congress in such case made and provided, and that your petitioners be allotted a period of ninety days in which to apply for a Writ of Certiorari from the Supreme Court of the United States.

Frank G. Tompkins, Harley & Blatt, Attorneys for Southern Railway Company and Southern Railway—Carolina Division.

[fol. 206] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

ORDER STAYING EXECUTION

The defendants, Southern Railway Company and Southern Railway-Carolina Division, having made application for stay of execution and enforcement of judgment in the above entitled cause for a reasonable time to enable them to apply for and obtain a Writ of Certiorari from the Supreme Court of the United States, it is

Ordered that the said defendants have ninety days from the date hereof within which to apply for a Writ of Certiorari from the Supreme Court of the United States and that the remittitur and execution and enforcement of judgment herein be stayed, provided the defendants shall file a bond with good and sufficient surety in the penal sum of five hundred dollars ($500.00) within ten days from the date hereof, conditioned to indemnify the plaintiff above named against all damages and costs that she may sustain by reason of the stay if the defendants fail to make application for such Writ within the preiod allotted therefor, or fail to obtain an order granting their application, or fail to make good their plea in the Supreme Court of the United States.

It is further ordered that a copy of this order be served without delay on the plaintiff herein or one of her attorneys of record.

It is further ordered that this order be filed in the office of the Clerk of the Supreme Court of South Carolina.

December 19, 1931.

Jesse F. Carter, Associate Justice of the Supreme Court of South Carolina.

[fol. 207] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above-entitled Court:

You are hereby requested to make a transcript of the record of this cause to be used in an application to the Su-

preme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of:

1. The record on appeal in said cause;
2. The opinion of the Supreme Court of the State of South Carolina.
3. All journal entries contained in the records and proceedings of the Supreme Court of the State of South Carolina relating to said cause;
4. The final judgment and decision of the Supreme Court of the State of South Carolina.
5. Your certificate to the record that it is a complete record in said cause.

Dated this 29th day of December, 1931.

Frank G. Tompkins, Harley & Blatt, Attorneys for Appellants.

[fol. 208] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 18, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1930)

FILE COPY

MAR 11

CHARLES E...

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 787

SOUTHERN RAILWAY COMPANY, and SOUTHERN RAILWAY-CAROLINA DIVISION, *Petitioners*,

v.

MARY ELIZABETH DANTZLER, AS ADMINISTRATRIX OF THE ESTATE OF LAWRENCE KEITT DANTZLER, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA, AND BRIEF IN SUPPORT THEREOF.

SIDNEY S. ALDERMAN,
H. O'B. COOPER,
FRANK G. TOMPKINS,
J. E. HARLEY,
Attorneys for Petitioners.

S. R. PRINCE,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No.

SOUTHERN RAILWAY COMPANY, and SOUTHERN RAILWAY-CAROLINA DIVISION, *Petitioners,*

v.

MARY ELIZABETH DANTZLER, AS ADMINISTRATRIX OF THE ESTATE OF LAWRENCE KEITT DANTZLER, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA.

To the Honorable the Supreme Court of the United States:

Your petitioners, Southern Railway Company and Southern Railway-Carolina Division, pray this Court to review on writ of certiorari a judgment of the Supreme Court of South Carolina in the case of *Mary Elizabeth Dantzler, as Administratrix of the estate of Lawrence Keitt Dantzler, deceased, v. Southern Railway Company and Southern Railway-Carolina Division,* rendered on the 14th day of December, 1931, as shown by the opinion of that court (R. 187). Under the practice prevailing in

South Carolina, no final judgment, separate from the opinion of the Supreme Court, is rendered, and the opinion is the final judgment. The record has been reprinted in this Court and page references herein are to the record as printed for this Court.

I.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

This was an action by the plaintiff administratrix for damages for the alleged wrongful death of her intestate. It was brought, tried and decided under the Employers' Liability Act, 35 Stat. 65-66, 45 U. S. C. 51-59. It was alleged in the complaint and admitted in the answer (R. 2, 4) and it appears from the evidence without dispute (R. 9, 10, 11, 12, 169-172) that at the time of the fatal injury the intestate was employed and the railway companies were engaged in interstate commerce and transportation.

The judgment of the Supreme Court of South Carolina, sought to be reviewed, affirmed judgment for plaintiff administratrix on a verdict for $12,500.00, as damages for the alleged wrongful death of her intestate, employed by petitioners as engineer operating an extra train consisting of an engine and tender running light. He was killed in a head-on collision with a superior train, resulting from his own disobedience of a written meet order which had been duly furnished him, which had been read to him by his conductor, which he had in his possession, and which had been neither fulfilled, cancelled nor annulled. The collision occurred about 9:30 or 9:35 a.m. in a heavy fog, after intestate had driven his train past the ordered meeting point, Orangeburg, S. C., at 9:25 a.m., and had run three miles beyond, colliding with the opposing superior train on the main line just beyond Stilton.

The collision resulted also in the death of the conductor on intestate's engine and in the deaths of three members

of the unoffending superior train, the conductor, the engineer, and the fireman.

Reference to Cognate Case Involving Conductor's Death.

This is a cognate and companion case to that *of Mary O. Youngblood, as Administratrix of the estate of Cleveland J. Youngblood, deceased, v. Southern Railway Company and Southern Railway-Carolina Division,* in which petition for writ of certiorari to the Supreme Court of South Carclina is being filed by these petitioners in this Court contemporaneously with the present petition. Youngblood was the conductor of the same extra train of which Dantzler was the engineer, Youngblood being also killed in the collision. The Youngblood case was tried on substantially the same evidence as the present Dantzler case, though on a separate record. Each resulted in a verdict and judgment against petitioners in the same amount of $12,500.00.

The judgment in the Youngblood case was affirmed by the Supreme Court of South Carolina on the same day on which the opinion was rendered in this case. While the Supreme Court of South Carolina rendered a separate opinion affirming judgment for the respondent in each of these cases, the opinion in the present Dantzler case contains no discussion of the evidence, no statement of the theory on which the recovery was sustained, and merely refers to the opinion of the court in the Youngblood case. In the present case, the Supreme Court of South Carolina said (R. 188):

> "The questions presented by this appeal are the same as those involved in the Youngblood case. It is conceded that the evidence in the two cases is substantially the same. What we have said, therefore, in the Youngblood case, disposes of the questions here raised."

We refer to the cognate Youngblood case here because petitioners are coincidentally filing the record and a petition for certiorari and supporting brief with this Court in the Youngblood case also. That petition raises the same questions as the present petition and we suggest that this Court will probably desire to consider together the petitions in the two cognate cases.

With this in view, it is important to point out *in limine* that there is no allegation, charge or contention in the present case that any negligence on the part of Youngblood, the conductor, caused Dantzler's death. Similarly, there is no allegation, charge or contention of the plaintiff in the Youngblood case that any negligence on the part of Dantzler, the engineer, caused Youngblood's death. In neither case did the plaintiff charge any negligence on the part of any member of the innocent crew of the opposing train.

In each of the cases the judgment was recovered, and was affirmed by the Supreme Court below, solely on the theory that, notwithstanding the admitted negligence of the plaintiff's intestate which proximately caused his death, there was sufficient evidence to go to the jury that negligence of dispatchers and operators of petitioners contributed "in part" to the death.

In the present case, the theory for recovery is exactly the same as in the case of Youngblood, the conductor, except that in the present case there was no contention made on the record that there was any negligence on the part of petitioners in failing to deliver copies of the meet order to the superior train at some point prior to the meeting point. That contention had been made in the previously tried Youngblood case, but here it was abandoned, apparently, because so manifestly without merit.

Brief History of This Case.

As shown in the petition in the Youngblood case, there were three trials of that case in the state court. The first

trial resulted in a judgment for petitioners on a directed verdict, but on appeal the Supreme Court of South Carolina reversed that judgment and remanded for a new trial. See 137 S. C. 47, 134 S. E. 660. Two justices, Cothran and Purdy, dissented on the ground that verdict was properly directed against the plaintiff and in favor of defendants.

The present Dantzler case was not tried, after verdict was directed against the plaintiff in the Youngblood case and pending the determination of the appeal therefrom. For this reason the Supreme Court of South Carolina in the opinion in 137 S. C. 47 made no reference to the Dantzler case.

After the first Youngblood appeal was determined, reversing direction of verdict for the defendants, both cases were tried in the trial court, the Youngblood case resulting in a verdict and judgment for the plaintiff there in the amount of $35,000.00 and the Dantzler case resulting in a verdict and judgment for the plaintiff, respondent here, in the amount of $33,875.00. Both cases were appealed to the Supreme Court of South Carolina, and that court, in separate opinions, but handed down on the same day, September 25, 1929, reversed both cases for errors of law committed and remanded again for a new trial. Purdy, J., an acting justice, did not participate in these decisions, but Cothran, J., concurred in the reversal of the judgments but dissented from the granting of new trials, asserting that the cases should have been remanded for judgments in favor of defendants. See opinion in second Youngblood appeal, 152 S. C. 265, 149 S. E. 742, and in the first Dantzler appeal, 152 S. C. 287, 149 S. E. 750.

There were certain differences in the errors of law for which the two cases were reversed but on the question as to whether the trial court should have directed verdict for the defendants in the Dantzler case, the Supreme

Court, in its opinion, merely referred to its opinion on the same question in the Youngblood case, 152 S. C., at 293.

Thereafter, the two cases were tried at the same term of the trial court. (See both records, page 1.) Each resulted in verdict and judgment in favor of plaintiff, for $12,500.00. Each case was appealed to the Supreme Court of South Carolina, which affirmed both judgments by separate opinions, each rendered on December 14, 1931, the opinion in this case merely referring to the opinion in the cognate Youngblood case. It is that opinion and judgment of the Supreme Court of South Carolina, forming the judgment herein, which is sought to be reviewed by this petition. That opinion and judgment, not yet reported, rendered December 14, 1931, is in this record (R. 187). Cothran, J., did not sit, being ill.

As hereinafter shown in more detail in the supporting brief, the only light to be found in any of these opinions of the Supreme Court of South Carolina as to the theory upon which that court sustained recovery of damages for the wrongful deaths of Dantzler and Youngblood is to be found in the opinion on the first Youngblood appeal, 137 S. C. 47, 134 S. E. 660, since in the two subsequent Youngblood appeals that court disposed of the merits of that question merely by reference to its opinion on the first appeal, and in the opinion in the present case, it disposed of that question by reference to its opinion in the Youngblood case.

The Evidence and the Grounds of Negligence Asserted.

The evidence in the present case is substantially the same as in the cognate Youngblood case and is stated in the petition in that case and the supporting brief, but will be here restated, with references to the present Dantzler record and with references to certain different testimony in this case.

Petitioners own and operate, among other lines of rail-

road, a single track road between Charleston and Columbia, in South Carolina, through Branchville, Orangeburg, St. Matthews, Fort Motte, and Andrews, the freight yard near Columbia. In railroad terminology, trains on the Southern Railway running from Columbia to Charleston are considered eastbound trains, and from Charleston to Columbia westbound. On the morning of the accident the engine of a westbound freight train known as Extra 683 West became disabled at Fort Motte, a station on the Southern Railway west of Orangeburg (R. 9, 10). This freight train, Extra 683 West, contained 24 cars of interstate freight (R. 103, 169-171). Petitioners kept a switching or yard engine at Branchville, a junction point east of Orangeburg, and decided to send that engine, No. 483, west to relieve the disabled engine and carry the freight train on to Andrews, the freight yard near Columbia, the crew of this relief engine consisting of respondent's intestate as engineer, Youngblood as conductor, and Witherspoon as fireman (R. 9, 10, 48-49, 115, 124).

At the same time a freight train known as Extra 723 East was moving over the same line of road in an easterly direction from Columbia to Charleston (R. 11-12). As it was necessary for these two trains, Extra 483 West and Extra 723 East, to meet and pass each other at some point on the road, the train dispatcher at Charleston wrote out and sent the following telegraphic order to Branchville and Orangeburg:

> "Extra 723 East get this order and meet Extra 483 West at Orangeburg. Engine 483 run extra Branchville to Andrews."

This was known as a form "31" order, and its serial number was 18. A form "31" order has to be signed for by the conductor when delivered to him (R. 16-18, 100-101, 125). This order No. 18 was sent simultaneously to the Branchville and Orangeburg operators at 7:58 a. m.

(R. 17, 49). The dispatcher at Charleston testified (R. 49), and his train order book showed (R. 172), that this train order No. 18 as transmitted to Orangeburg was addressed to Extra 723 East and operator,—the words "and operator" in the address signifying that it was a 5-copy order, and that the operator at Orangeburg should make five copies of the order, one for his file and two copies to be delivered to the conductor of each train affected (R. 13-14, 145-146). However, the operator on duty at Orangeburg, T. E. Jones, testified that this order No. 18 as transmitted to him did not contain the words "and operator" in the address, but was addressed only to Extra 723 East, and hence he made but three copies of the order,—one for his file and two copies to be delivered to the conductor of the train addressed (R. 61). Shortly after this order was sent, Operator Jones at Orangeburg was relieved by Operator Tyson, and Jones turned over to his successor, Tyson, the three copies that he had made of this order No. 18 addressed only to Extra 723 East (R. 62-63). Under this arrangement the operator at Orangeburg had no copies of the order for delivery to the crew of Extra 483 West, as he would have had if the order had been received at Orangeburg as a 5-copy order (R. 70).

This train order No. 18 to the Branchville operator was transmitted and received addressed only to Engine 483 (R. 17-18, 50, 172), which meant that it was a 3-copy order (R. 14, 38, 41, 102), and hence the operator at Branchville made three copies of the order, one for his file, and delivered two copies to the conductor of Extra 483 at 8:31 a. m. (R. 100). The conductor, Youngblood, delivered one of these copies to respondent's intestate, and they read over the order in the presence of the fireman before their engine left Branchville (R. 112). The evidence is uncontradicted that there was nothing on the face of the train order delivered to respondent's intestate at Branchville indicating that he would be given additional copies of this

order, or any other order, at Orangeburg (R. 17, 19, 23. 50, 101, 126, 131, 133, 141).

While these two trains, Extra 483 West and Extra 723 East, were both extra trains, Extra 723, being eastbound, was the superior train by authority of the time-table direction (R. 19-21, 52-53, 74, 126, 173-174), and hence Extra 483 West was required to take the siding at the meeting point, as provided by rule No. 88 as follows (R. 175):

> "At meeting points between extra trains, the train in the inferior time-table direction must take the siding unless otherwise provided."

Also, rule No. 513 of petitioners' rule book is as follows (R. 182):

> "Approaching meeting points made by train order, the train to take siding may, after stopping, pass the stop signal immediately preceding the meeting point and proceed under control to the entrance switch of siding."

At 8:35 a. m. engine 483, then operated as a train, Extra 483 West, consisting of only the engine and tender, with Conductor Youngblood and Fireman Witherspoon riding in the cab of the engine with respondent's intestate, left Branchville and proceeded west toward Orangeburg (R. 100, 112). At Rowesville, a station eight or nine miles east of Orangeburg, the conductor of this train was handed an order to the effect that No. 12, engine 1055, which was the regular passenger train from Columbia to Branchville, would wait at packing house switch until 9:15 for Extra 483 West (R. 113). This packing house switch is located about three-fourths of a mile east of the station at Orangeburg (R. 117). Extra 483 West proceeded on to the packing house switch, where it took the siding and waited for the passenger train, No. 12, to pass (R. 113, 117). Extra 483 West then backed out on to the

main line and proceeded toward Orangeburg, and as it approached that station the semaphore was showing red or the stop signal against this train, and in response to four blasts of the whistle from Engineer Dantzler, the operator at Orangeburg dropped the semaphore board, indicating proceed or clear signal and signifying that he had no train orders for the crew of that train. (R. 67, 72, 75). The semaphore at Orangeburg is located in front of the operator's office and about 75 yards east of the east switch of the passing track, and a westbound train approaching Orangeburg would necessarily have to proceed past this semaphore in order to reach the entrance to the passing track (R. 24, 25, 65, 72, 107-108, 126). This passing track is nearly a mile long (R. 65, 72, 108).

The train dispatcher in Charleston testified that he called the operator at Orangeburg and inquired about Extra 483, and was told that it was coming; that "I told him to clear him, to tell him to go to the west end of the pass track and wait on Extra 723" (R. 43-44, 51). The dispatcher was anxious to get Extra 483 to Fort Motte as soon as possible (R. 43), and by waiting in the west end of the passing track instead of the east end, this train would, of course, be in position to make a more expeditious departure from Orangeburg after Extra 723 East had arrived. The operator at Orangeburg admitted this telephone conversation, but understood the directions to be "to clear Extra 483, and *let him go* to the west end of the pass track, etc." (R. 64, 69). This operator also testified that when he dropped the semaphore board he knew that the crew of Extra 483 West had in their possession the train order requiring them to meet Extra 723 East at Orangeburg, and that when this engine passed by the semaphore and his office he assumed that it was going up in the passing track to wait on Extra 723 (R. 72, 74).

There was testimony by plaintiff's witness Huggins, a man who had not been employed by a railroad company for eighteen years (R. 85-86) and who yet undertook to

qualify as an expert on new rules of Southern Railway Company adopted since he had worked for it, in which he undertook to assert that the act of the operator in dropping the semaphore board cleared plaintiff's intestate to proceed on the main line to the next telegraph station, regardless of his written meet order (R. 81, 87).

The testimony of this witness is so biased on its face, so manifestly overzealous to exculpate plaintiff's intestate and to aid a recovery against petitioners, so clearly in conflict with all of the other evidence in the case, so clearly contrary to the other evidence of respondent, and so clearly in conflict with the rules of the company in evidence, that it cannot be considered as substantial evidence to support a recovery.

The same witness undertook to contend argumentatively that there was negligence of petitioners in maintaining an unsafe arrangement of the passing track at the meeting point, in that the east end of the passing track was west of the semaphore board at Orangeburg and that hence in order to obey the meet order it was necessary for plaintiff's intestate to proceed past the board 75 yards in the territory of the opposing train before he could reach the passing track to obey the meet order (R. 98). There was no allegation in the complaint of any negligence in the arrangement of the passing track with reference to the semaphore board (R. 2-4), and, of course, plaintiff's intestate was perfectly familiar with the situation and had been operating over it for many years and certainly assumed any risk incident thereto (R. 6, 124). Besides, this contention could only have been pertinent if the collision had occurred within the 75 yards between the semaphore board and the nearest entrance to the passing track. In fact, the collision occurred three miles beyond (R. 122).

Extra 483 West proceeded past this semaphore and past the east switch of the passing track and on down the

main line to the west end of the passing track, where it stopped after another engine in the yards, No. 61, sounded one blast of the whistle, which was a cautionary signal (R. 121). As to what ensued, the undisputed testimony of the fireman, Witherspoon, is as follows (R. 114-115):

> "After we passed the semaphore, and was going up by the pass track switch another engine gave a blast of the whistle, which indicated stop, and Dantzler stopped at the west end of the pass track, and Youngblood got down and examined the switch, and we pulled up over the switch, and Youngblood came up and got on the engine. * * * I asked him if he did not intend to go back in there, and he said No, we have time to go to Stilton, and I went to work on my fire, and the next time I realized where we were we were going over the switch at Stilton, and I turned to him to ask if he was going in there, and at that time he hollowed out to me to get ready to jump, —we are going to hit."

Extra 483 West collided head-on with Extra 723 East at a point just west of Stilton, which is a small station about two miles west of Orangeburg (R. 122), this collision resulting in the deaths of respondent's intestate and Conductor Youngblood of the crew of Extra 483, and also in the deaths of the conductor, engineer and fireman of the crew of Extra 723 (R. 7, 105). Extra 483 arrived at Orangebourg, the meeting point, at 9:25 a. m., and the collision occurred about 9:35 (R. 46).

The testimony is uncontradicted that on the morning of the collision, after respondent's intestate had been taken to the hospital and when he knew that death was imminent, he stated to the witness J. C. Street, who was occupying another bed in the same room: "I met 723 on the main line, and I had a dead meet order with them at Orangeburg" (R. 147). The witness Street again asked respondent's intestate, "How came you all to do that?"

and Dantzler said, "I don't know,—I just forgot,—it is too late now, and I am just to blame for it." (R. 148). When he told Street "that he had a dead meet order to meet them at Orangeburg," he added, "and if you want to see them, get them out of the jumper pocket and read them." The witness Street got the meet order out of intestate's jumper (R. 153), and it was introduced in evidence (R. 172). In another version of the conversation, the witness Street said the following,. "I said who was with you? and he said 'Youngblood and Witherspoon. I think everybody's killed on both crews. It is all my fault. It is too late' " (R. 155).

And in the afternoon of the same day, respondent's intestate recognized Dr. J. S. Wimberly at the hospital and called him into his room. Dr. Wimberly had occasion to assist in administering to him throughout the afternoon and testified that during some conversation Engineer Dantzler "mentioned to me the cause of the wreck. He said he overlooked the orders, and met the 723 on the main line,—it is too late now. Those were his words" (R. 157).

The decedent, Dantzler, was 41 years of age at the time of his death, and left surviving him his widow, the respondent, also 41 years of age, and one child, John Lawrence Dantzler, age 16 years (R. 6). The intestate was paid the sum of $2,650.22 as wages for the year next preceding his death (R. 6). There was no testimony that the respondent and her child were dependent upon the intestate for support, or that he contributed any amount to their support. No testimony was offered as to the deceased's or his widow's expectancy of life, and no proof that the decedent's widow and child were deprived of any pecuniary assistance by his death.

It was admitted in the record that copies of the train order No. 18 delivered at Branchville to the conductor and engineer of Extra 483 were found upon their persons after the collision (R. 35, 99, 172).

The grounds of negligence alleged against petitioners (R. 2, 3) and submitted to the jury were: in not providing a safe and suitable place wherein and whereon the intestate employee could perform his work; in not providing safe and suitable appliances and instrumentalities with which the intestate employee could perform his duties; in failing to furnish safe and competent agents, officers and employees to direct the movements of the two trains; in furnishing unsafe and incompetent agents, officers and employees to direct the movements of the two trains; in failing to give proper orders for the movement of the two trains which were in collision; in giving wrong and improper orders for the movement of the two trains which were in collision; in not giving proper signals for the movements of the train on which the intestate employee was working; in giving wrong and improper signals for the movement of the train on which the intestate employee was working; and owing to the negligence of the agents, officers and employees in directing the movements of the two trains in collision.

At the close of all the evidence, petitioners moved for the direction of a verdict in their favor, which motion was overruled and exception taken thereto (R. 167-168). The State Supreme Court sustained the trial court's refusal to grant petitioners' motion for a directed verdict (R. 187-188, and pages 165-171 of record in companion Youngblood case). This holding of the Supreme Court of South Carolina, petitioners contend, was erroneous, and is assigned as error.

Judgment was rendered for respondent in the sum of $12,500.00 (R. 1), which judgment was affirmed by the Supreme Court of South Carolina on December 14, 1931, as shown by its opinion and judgment in the record (R. 187).

II.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The entire evidence herein is wholly insufficient to prove actionable negligence of the petitioners, or that such negligence was the proximate cause of intestate's death; the entire evidence shows that the sole, efficient, proximate cause of intestate's death was his own negligence in disobeying his meet order; and the judgment for respondent should have been reversed, and judgment for petitioners should have been entered, as matter of law under the Federal statute.

Atchison, T. & S. F. R. Co. v. Saxon, October Term, 1931, No. 291, decided Feb. 15, 1932, 284 U. S. —;
Atchison, T. & S. F. R. Co. v. Toops, 281 U. S. 351;
Unadilla Valley R. Co. v. Caldine, 278 U. S. 139;
Yadkin R. Co. v. Sigmon, 267 U. S. 577, reversing and remanding without opinion, 186 N. C. 519, 120 S. E. 56;
Davis v. Kennedy, 266 U. S. 147;
Frese v. Chi., B. & Q. R. Co., 263 U. S. 1;
Great Northern R. Co. v. Wiles, 240 U. S. 444;
Bradley v. Northwestern P. R. Co., 44 F. (2d) 683;
Paster v. Pennsylvania R. Co., 43 F. (2d) 908;
Southern R. Co. v. Hylton, 37 F. (2d) 843;
Unadilla Valley R. Co. v. Dibble, 31 F. (2d) 239; certiorari denied, 280 U. S. 565;
Virginian R. Co. v. Linkous, 230 Fed. 88, certiorari denied, 242 U. S. 630;
Davis v. Payne (Ore.), 216 Pac. 185, certiorari denied, 263 U. S. 720;
McDonald v. Great Northern R. Co. (Minn.), 207 N. W. 194.

2. The entire evidence herein shows that the intestate voluntarily exposed himself to risks and dangers so open and obvious that no ordinarily prudent man would have

continued to face them, and he assumed the risk of his death.

Missouri Pac. R. Co. v. David, No. 365, October Term, 1931, decided Feb. 15, 1932, 284 U. S. —;
Toledo, St. L. & W. R. Co. v. Allen, 276 U. S. 165;
Atlantic C. L. R. Co. v. Southwell, 275 U. S. 64;
St. L.-S. F. R. Co. v. Mills, 271 U. S. 344;
Chesapeake & Ohio R. Co. v. Nixon, 271 U. S. 218;
Pryor v. Williams, 254 U. S. 43;
Chi., R. I. & P. Ry. Co. v. Ward, 252 U. S. 18;
Boldt v. Pennsylvania R. Co., 245 U. S. 441;
Chesapeake & O. R. Co. v. De Atley, 241 U. S. 310;
Seaboard A. L. Ry. v. Horton, 233 U. S. 492;
Chesapeake & O. R. Co. v. De Atley, 159 Ky. 687, 167 S. W. 933, 935.

3. The Supreme Court of South Carolina misinterpreted the Federal Employers' Liability Act in upholding a recovery of substantial damages on the evidence, there being an entire absence of any proof as to what pecuniary assistance or support the named beneficiaries might reasonably have expected to receive from respondent's intestate had he lived.

Gulf, C. & S. F. R. Co. v. McGinnis, 228 U. S. 173;
Michigan Central R. Co. v. Vreeland, 227 U. S. 59;
Nashville, C. & St. L. R. Co. v. Anderson, 134 Tenn. 666, 185 S. W. 677.

WHEREFORE, because said decision and judgment of the Supreme Court of South Carolina decided the foregoing Federal questions erroneously and contrary to the decisions of this Court, your petitioners, upon this petition, upon the annexed brief, and upon a certified transcript of the record of all proceedings in the Supreme Court of South Carolina, pray that a writ of *certiorari* be issued, to the end that said cause may be reviewed and determined by this Court, as provided by law, and that upon

such review the said judgment of the Supreme Court of South Carolina be reversed.

SOUTHERN RAILWAY COMPANY, and
SOUTHERN RAILWAY-CAROLINA DIVISION,
By
SIDNEY S. ALDERMAN,
H. O'B. COOPER,
FRANK G. TOMPKINS,
J. E. HARLEY,
Attorneys for Petitioners.

S. R. PRINCE,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No.

SOUTHERN RAILWAY COMPANY, and SOUTHERN RAILWAY-CAROLINA DIVISION, *Petitioners,*

v.

MARY ELIZABETH DANTZLER, AS ADMINISTRATRIX OF THE ESTATE OF LAWRENCE KEITT DANTZLER, Deceased, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of South Carolina has not yet been officially reported. It will be found in the record beginning at page 187.

II.

JURISDICTION.

The date of the judgment sought to be reviewed is December 14, 1931.

The jurisdiction of this Court is invoked on the ground that petitioners, in the courts below, claimed immunity from liability and asserted rights under the Federal Employers' Liability Act, 45 U. S. C. 51-59, a statute of the United States, which claim and rights were denied, and that petitioners have not heretofore had opportunity to submit said claim and rights for adjudication to any Federal tribunal, jurisdiction being therefore invoked under Judicial Code, Section 237, as amended, 28 U. S. C. 344 (b).

Some of the cases believed to sustain the jurisdiction of this Court are:

Atchison, T. & S. F. Co. v. Saxon, decided Feb. 15, 1932, 284 U. S. —;
Atchison, T. & S. F. Co. v. Toops, 281 U. S. 351;
Chesapeake & Ohio R. Co. v. Stapleton, 279 U. S. 587;
Unadilla Valley R. Co. v. Caldine, 278 U. S. 139;
Toledo, St. L. & W. R. Co. v. Allen, 276 U. S. 165;
Chicago, M. & St. P. R. Co. v. Coogan, 271 U. S. 472;
Chesapeake & Ohio R. Co. v. Nixon, 271 U. S. 218;
Yadkin R. Co. v. Sigmon, 267 U. S. 577;
Davis v. Kennedy, 266 U. S. 147;
Frese v. Chi., B. & Q. R. Co., 263 U. S. 1.

III.

STATEMENT OF THE CASE.

The case is sufficiently stated in the accompanying petition, in which the relevant facts are fully stated. References to the facts will be made and repeated in the body of this brief only as may be necessary to discussion of the questions involved.

IV.

SPECIFICATION OF ERRORS.

The errors assigned and relied on by petitioners are the following:

1. That the Supreme Court of South Carolina erred in refusing to sustain and overruling petitioners' exceptions 1, (a), (c), and (d), as follows:

> Praying reversal of the verdict and judgment—
>
> "1. Because his Honor erred * * * in overruling the motion for direction of verdict in favor of defendants, upon the grounds:
>
> (a) That the only reasonable inference from the entire testimony is that the death of the plaintiff's intestate was caused solely by his own negligence and recklessness.
>
> * * * * * * * * *
>
> (c) That the only reasonable inference to be drawn from the entire testimony is that the proximate cause of the injuries resulting in the death of plaintiff's intestate was the intestate's own violation of a positive meet order which he had in his possession, not fulfilled, superseded or annulled.
>
> (d) That there is no evidence of actionable negligence on the part of the defendants.'" (R. 185)

2. That the Supreme Court of South Carolina erred in refusing to sustain and in overruling petitioners' exception 1, (b), as follows:

> Praying reversal of the verdict and judgment—
>
> "1. Because his honor erred * * * in overruling the motion for direction of verdict in favor of defendants, upon the grounds:
>
> * * * * * * * * *
>
> (b) That the entire testimony is susceptible of but one reasonable inference, namely, that the danger of the situation resulting in the death of plaintiff's intestate was so obvious that an ordinarily careful person would have observed and appreciated the same, and hence plaintiff's intestate assumed the risks thereof." (R. 185.)

3. That the Supreme Court of South Carolina erred in refusing to sustain and in overruling petitioners' exception 1, (e), as follows:

> Praying reversal of the verdict and judgment—
>
> "1. Because his honor erred * * * in overruling the motion for direction of verdict in favor of defendants upon the grounds:
>
> * * * * * * * * * *
>
> (e) That there is no evidence as to pecuniary loss sustained by the beneficiaries named in the complaint as the result of the death of plaintiff's intestate and hence no evidence upon which to base an award of damages." (R. 185.)

V.

ARGUMENT.

POINT I.

THE ENTIRE EVIDENCE HEREIN IS WHOLLY INSUFFICIENT TO PROVE ACTIONABLE NEGLIGENCE OF THE PETITIONERS, OR THAT SUCH NEGLIGENCE WAS THE PROXIMATE CAUSE OF INTESTATE'S DEATH; THE SOLE, EFFICIENT, PROXIMATE CAUSE OF INTESTATE'S DEATH WAS HIS OWN NEGLIGENCE; AND THE JUDGMENT FOR RESPONDENT SHOULD HAVE BEEN REVERSED, AND JUDGMENT FOR PETITIONERS SHOULD HAVE BEEN ENTERED, AS MATTER OF LAW UNDER THE FEDERAL STATUTE.

What was said by this Court in *Atchison, T. & S. F. R. Co. v. Saxon,* No. 291, October Term, 1931, decided Feb. 15, 1932, applies here:

> "The cause is one of a peculiar class where we have frequently been obliged to give special consideration

to the facts in order to protect interstate carriers against unwarranted judgments and enforce observance of the Liability Act as here interpreted."

The Supreme Court of South Carolina in this case has imposed on petitioners a liability, under the Federal Employers' Liability Act, in plain disregard of controlling Federal law as laid down and enforced in numerous recent decisions of this Court, for the death of an engineer killed in a collision caused by his own reckless disobedience of a positive meet order which he had and was bound to obey. His disobedience of the order also caused the deaths of three innocent members of the crew of the unoffending superior train collided with, thereby imposing clear liability on petitioners under the Act for those innocent deaths. Petitioners have paid the claims for these three deaths (Youngblood, R. 143). Yet the Act has been perverted to allow the administratrix of the employee, whose own disobedience of order and positive recklessness caused the disaster, to recover damages for his death.

Unless this Court grant this petition and give relief these interstate carriers have no protection against the unwarranted judgment and the Liability Act as interpreted by this Court has not been observed.

There is not here alleged in the complaint or relied upon to support the recovery any charge of negligence on the part of any other member of the crew of the intestate's train or on the part of any member of the crew of the opposing train. The sole support of the recovery is the alleged negligence of the dispatcher, and/or of the operator at the ordered meeting point, in the transmission and delivery of the order which the intestate admittedly received and disobeyed, and in failing to do certain additional things to remind him again of his order and thus seek to prevent his disobedience, and in signaling his train.

Succinctly stated, the question is this: When an en-

gineer running a light engine with tender as an inferior extra train under sole authority of a written order, delivered in duplicate at the start of the run to the conductor, who read the order to the engineer and delivered him a copy, which written order was a meet order requiring him to meet an opposing superior train at a meeting point on his run, disobeys and disregards his meet order, proceeds up the main line in the territory of the other train almost three miles beyond the ordered meeting point, and there collides with the unoffending opposing train in a dense fog and is killed in the collision resulting from his disobedience of the meet order, can it be held that the employer railroad is liable for his death under the Federal Act on the theory that a proximate cause "in part" of his death was the failure of the dispatcher or operator to have delivered to his conductor at the meeting point extra copies of the same meet order he already had in his possession, or to give him verbal instructions, unauthorized by the rules, to do the same thing he was ordered to do by his written meet order, or the act of the operator at the meeting point in giving him a clear board, which, under the rules, and under all the substantial and credible testimony, simply authorized him to go by the semaphore in order to get into the passing track to obey the written meet order he had?

The most humanly complete answer to this question would seem to be the statement made by the intestate himself, with that frankness and honesty inspired by realization of approaching death, and in a manifest effort to perpetuate the truth as to the disaster which he had caused: "Callie, I met 723 on the main line, and I had a dead meet order with them at Orangeburg, and I got the order and read it—" (R. 147). "I just forgot,—it is too late now, and I am just to blame for it" (R. 148). "I think everybody's killed on both crews. It is all my fault. It is too late" (R. 155).

Theories Upon Which the Court Below Sustained Recovery.

No light is to be found in the opinion of the court below in this case as to the theories upon which the recovery was sustained. It merely referred to the opinion of the same date in the Youngblood case (R. 188); (Youngblood case R. 165).

No new light is thrown on the matter in that opinion since it disposes of the exceptions addressed to the refusal of the trial court to direct judgment for the defendants by merely referring to and quoting from its opinion on the first appeal in the Youngblood case (Youngblood R. 167-170).

No light on this matter is to be found in the opinion of the State Supreme Court on the first appeal of the Dantzler case, 152 S. C. 287, 149 S. E. 750, which merely referred to the opinion of the same date on the second Youngblood appeal, 152 S. C. 265, 149 S. E. 742.

And that opinion throws no light on the matter since it merely referred back to the court's opinion on the first Youngblood appeal, the court saying: "The testimony at the second trial was practically the same as at the first trial, though slightly stronger for the plaintiff. On the first appeal we gave very careful consideration to the questions presented, and held that there was testimony tending to show negligence on the part of defendants, and that, in spite of any contributory negligence on the part of Youngblood, the whole matter should have been submitted to the jury for determination. We see no reason to change the views we then held and this exception is overruled." (152 S. C. 272.)

Consequently, it is necessary to go back to the opinion of the State Supreme Court on the first Youngblood appeal, 137 S. C. 47, 134 S. E. 660, to discover the theories upon which that court affirmed the judgment here sought to be reviewed. That was an appeal in the Youngblood

case by the plaintiff administratrix from a judgment of the trial court in favor of defendants on verdict directed against the plaintiff under the authority of *Davis v. Kennedy*, 266 U. S. 147. The majority of the State Supreme Court reversed this judgment, holding that there was evidence of carrier negligence proximately causing the death of Youngblood sufficient for submission to the jury on the following theories:

1. That it was negligence for the operator at Orangeburg to drop the semaphore board.

2. That there was negligence, either on the part of the Charleston dispatcher or of the Orangeburg operator, in failing to treat the meet order addressed to Extra 723 as a 5-copy order and deliver extra copies thereof to Youngblood on Extra 483 at the meeting point.

3. That it was negligence for the operator at Orangeburg, after dropping the semaphore board, to fail to give additional verbal instructions to Youngblood to the same effect as the written order he already had.

4. That it was negligence to fail to address and deliver the meet order to the opposing superior train, Extra 723, at some point prior to the meeting point.

We have made the pertinent quotation from that opinion in the brief supporting the petition in the Youngblood case (p. 22) and do not repeat it here.

In the Dantzler record there is nowhere any suggestion of a contention predicating railroad negligence on the failure to address and deliver the meet order to the opposing superior train, Extra 723, at some point prior to the meeting point, and, accordingly, this contention is wholly lacking in the present case. It must, therefore, be assumed that the Supreme Court of South Carolina, in affirming the judgment herein, did so on the first three theories above listed.

The dissenting opinions of Judges Cothran and Purdy in the first Youngblood case, 137 S. C. 47, 134 S. E. 660,

constitute a complete brief for petitioners' side of this case. They conclusively demonstrate that there was no evidence of any carrier negligence causally related to the death on any or all of the theories of the majority. The dissents correctly construe and apply the decisions of this Court and other Federal courts, as we read and understand them.

Purdy, J., did not sit on the second appeal in the Youngblood case, but Cothran, J., dissented again on the ground that the evidence entitled the defendants to a directed verdict. He discussed and applied later decisions of this Court, especially emphasizing *Unadilla Valley R. Co. v. Caldine,* 278 U. S. 139. We have quoted from this dissent in our brief in support of the petition in the Youngblood case (p. 24), which quotation we do not here repeat. See 152 S. C. 265, 280, and 152 S. C. 287, 295.

In view of the above, we are forced to discuss each of the three theories of railroad negligence upon which the State Supreme Court apparently affirmed the judgment in this case below.

The Meaning of Dropping the Semaphore.

There can be no dispute on the record as to Dantzler's own negligence. He received from his conductor, Youngblood, copy of the running and meet order No. 18 at Branchville, and they both read the order. All three, engineer, conductor and fireman, were riding in the cab of the engine, and shortly after the train pulled out from Branchville, in answer to a question from the fireman as to what orders they had, the conductor replied, "We have nothing but run extra to Andrews and meet 723 at Orangeburg" (R. 112). The evidence is uncontradicted that there was nothing on the face of the train order in Dantzler's possession indicating that he would be given additional copies of this order, or any other order, at Orangeburg (R. 18, 19, 23, 50, 101, 126, 131, 133, 141).

As this train, Extra 483, proceeding west, approached the semaphore at Orangeburg, the meeting point, the intestate engineer sounded four blasts of the whistle, and in response thereto, the operator at Orangeburg dropped the semaphore board to clear signal. Every witness in the case, plaintiff's witnesses and defendants' witnesses, who was questioned as to the significance of the change of the semaphore to clear signal, with the one exception of plaintiff's witness Huggins, to whose testimony we shall advert in a moment, testified that dropping the semaphore board to clear signal only meant that there were no further train orders at that station for the crew of that train and that they should proceed upon, and comply with, the orders they already had (R. 18, 19, 25, 55, 75, 76, 126, 134-135).

G. K. Fickling, who was not connected with the petitioner railroads, called as a witness for the respondent, testified on direct examination (R. 93):

> "Q. When the four blasts of the whistle were given, and the board drops, and drops from red to white,—what is the indication?
> "A. To proceed.
> "Q. What is the name of that when it is dropped?
> "A. They call it a clear board.
> "Q. That means what?
> "A. *Proceed on the orders that you have.*
> . . . . . .
> "Q. But when the board is dropped, the indication is what?
> "A. *That they have no order for them.*"

And the witness Fickling testified on cross-examination (R. 96):

> "Q. The only way that Extra 483 could have been operated was by train order?
> "A. Yes, sir.
> . . . . . .

"Q. A verbal order would have no effect.

"A. No, sir.

"Q. It makes no difference who would give them, a verbal order itself is not binding?

"A. No, sir, if they had a written train order their duty was to comply with it.

* * * * * * * * *

"Q. When the semaphore board is dropped, that is an indication that the station had no further train order?

"A. Yes, sir.

"Q. *And that the conductor and the engineer should comply with the order that they had.*

"A. *Yes, sir.*"

Respondent's witness Pierce testified (R. 18-19):

"Q. Now, with that order in the possession of Engineer Dantzler, which upon its face shows that he was to meet this Extra train 723 going east at Orangeburg,—when that train approached Orangeburg, and that semaphore showed red, and he stopped and asked for signals, and it was dropped and showed clear,—what does that mean?

"A. That there was no orders for him at Orangeburg.

"Q. And he was to do what?

"A. And that they may proceed on the orders he had, which was to go into the side track and meet extra train No. 723 at Orangeburg. It meant to go into the east end of the pass track at Orangeburg."

Respondent's witness Rogers testified (R. 51-52):

"Q. The order which he had when he approached that train order board, which we have called here the semaphore,—when he cleared him and let the board down,—what was his duty under the circumstances?

"A. To carry out any previous orders that he might have.

"Q. That was his duty?
"A. Yes, sir.
"Q. What was the order that he had?
"A. To meet Extra 723 at Orangeburg.
"Q. What should he have done?
"A. Headed in the east pass track switch and wait until Extra 723 came.
"Q. No matter whether the general copies of the order were given him or not?
"A. No, sir.
"Q. Or a clearance card?
"A. No, sir.
"Q. That was his duty under the circumstances?
"A. Under the order he had, yes.
"Q. When that board went down clearing him, he should have gone into the passing track?
"A. Yes, sir, fulfilling any order that he had in his possession that had not been fulfilled.
"Q. Now, had this order that he had in his possession been fulfilled?
"A. No, sir, it had not,
"Q. Had it been superseded?
"A. No, sir.
"Q. Or annulled?
"A. No, sir.
"Q. Then he should have gone into the passing track under the order that he had?
"A. Yes, sir.
"Q. And waited until Extra 723 came to Orangeburg?
"A. That is correct. That was his duty.
"Q. And under all of the circumstances?
"A. Yes, sir."

The same witness testified (R. 53):

"Q. In running by that meeting point two or three miles west of Orangeburg, and running into the other train known as No. 723,—was that or not in direct violation of the order that they had?
"A. Yes, sir, it was."

Respondent's witness Tyson testified (R. 69):

"Q. Now, by dropping the semaphore board you were lapping No. 483 beyond his territory and into the territory of Extra 723?

"A. The 483 had orders to go in the east end of the pass track and it was necessary to go beyond my station to get into the pass track."

Again, the same witness testified (R. 72):

"Q. When you dropped it, it was to proceed?

"A. Yes, sir.

"Q. Where?

"A. To proceed on the orders that he had.

"Q. What orders did he have?

"A. He had orders to meet Extra 723.

"Q. When he passed your office, where were you at that time, and after you dropped the board,—where did you assume that he went?

"A. I thought he went in the pass track and on up in the yard toward the other end."

Again, the same witness testified (R. 75-76):

"Q. And when this Extra No. 483, under the yard limit rule, when it passed your station and went by Orangeburg, and failed to go into the pass track, it violated the rules of your company?

"A. Yes, sir.

"Q. And every rule?

"A. Yes, sir, they did.

"Q. So you say that when that semaphore board drops it means for the train to proceed?

"A. Yes, sir.

"Q. It means also that you have no orders or further orders for them?

"A. It means that I have no further orders when I pull the board down.

"Q. And you having no further orders for them when they passed, what was their duty?

"A. To carry out the orders that they had in their possession already.

"Q. And that was to go into the pass track and let Extra 723 go by?

"A. Yes, sir."

The foregoing quotations are all from respondent's witnesses. Petitioners' witnesses testified to the same effect. (R. 126, 134, 141.)

One witness for respondent, Huggins, undertook to give testimony in conflict with all the other evidence. He testified that he had worked as a locomotive engineer in main line service for the Southern Railway, the Seaboard Air Line and the Atlantic Coast Line Railroad Company, but that for the past eighteen years he had not been employed by a railroad company. Yet he undertook to testify as an expert on petitioners' rules. His manner and demeanor on the witness stand is apparent from the mere reading of his testimony. He was argumentative and contentious and was manifestly astute to try to shield the intestate engineer from blame and to fix blame on the petitioners. He undertook to testify (R. 81) that when the operator dropped the board it meant to clear Extra 483 to the next telegraph station, that dropping the board cleared them to pass the meeting point. He undertook to testify that this was true irrespective of the meet order (R. 87).

This testimony is so in conflict with all of the other testimony of respondent, is so clearly in conflict with the rules in evidence, and is so incredible on its face, as not to rise to the rank of substantial testimony. It is clearly insufficient to warrant submitting the case to the jury. Even this witness testified (R. 80):

"Q. When a train gets a meet order, what is their duty in approaching a station where they are to meet another train?

"A. If a signal board is there?

"Q. Yes?

"A. He makes four blasts of the whistle to know whether that board is going to remain red on him, *or*

whether they have not got anything, and if they have anything for him it is held red, *and if not he clears him.*"

It is to be observed that in the Youngblood case the same witness swore that dropping the semaphore meant, "I have no further orders for you; proceed on the order you have," just as all the other witnesses testified in both cases (Youngblood R. 71).

We submit that there is no substance of conflict on the record that this was true. The dropping of the semaphore told Dantzler there were no further orders for him at the meeting point, that he should proceed under the order he had, and merely cleared him to pass the semaphore for the sole purpose of going into the passing track to obey that order, the passing track being the only place at which he could obey the meet order.

Engineer Dantzler was an experienced railroad man, having been in the employ of petitioners as a locomotive engineer for many years (R. 6, 124), and he knew that dropping the semaphore board meant only that the operator at Orangeburg had no train orders for him, and he knew that he had to pass that semaphore and proceed 75 yards west of it in order to reach the entrance to the passing track at Orangeburg and fulfill the meet order in his possession. He knew, as testified to by all the witnesses, that extra trains are run only by train orders (R. 12, 17, 48, 101, 125, 133, 141-142), and that "train orders once in effect continue so until fulfilled, superseded or annulled" (Rule 220, R. 179). He knew that a train order could not be superseded or annulled except by a subsequent train order in writing (R. 133), and when he got the semaphore signal that the Orangeburg operator had no train orders for him, he therefore knew that the written meet order in his pocket had not been superseded or annulled. He knew better than anybody else that he had not met and passed Extra 723, and hence his meet order could not have been

fulfilled. He knew that his train, being westbound, was in the inferior time-table direction (R. 20, 21, 52, 53, 74, 126, 173-174), and hence his train was required to take the siding at the meeting point (Rule 88, R. 175).

Also he knew that, for the purpose of carrying out his meet order with the opposing superior train, he had a right, under rule No. 513 (R. 182), to disregard even the red board or stop signal of this semaphore and proceed past it under control to the entrance switch of the passing track. And when Engineer Dantzler, after passing the semaphore at Orangeburg, failed to drive his engine in the passing track and there await the arrival of Extra 723, but proceeded on the main line through the station yard and beyond Orangeburg, the meeting point, he violated the only train order he had, and the only order that had been issued, governing the operation of his train.

There is no support in the evidence for the theory that it was competent for the jury to find that dropping the semaphore meant to Engineer Dantzler that his written order was cancelled or fulfilled, or that he was at liberty to disregard it and proceed to destination. All the substantial evidence shows it meant to proceed under the written meet order he had.

The Treating of the Order Addressed to Extra 723 as a 3-Copy, Instead of a 5-Copy, Order.

But the principal contention of respondent to support recovery, and the contention to which the state court majority seems to have given most weight in the opinion on the first Youngblood appeal, 137 S. C. 47, 134 S. E. 660, is that if the meet order as addressed to Extra 723 at the meeting point had been treated as a 5-copy order, copies thereof being delivered to Dantzler's conductor at Orangeburg, this might have prevented his violation of the same order which was delivered to him at Branchville, and that

the failure to do so was a negligent proximate cause of his death.

The evidence in the case shows that under the pertinent rules of the company the order, being addressed to the train "and operator" should have been transcribed by the operator at Orangeburg as a 5-copy order, that accordingly additional copies should have been delivered to the first of the two trains to reach the meeting point, which was intestate's train, Extra 483. However, even if the failure to do this was negligence, the evidence is likewise undisputed, as we have already shown, that the order which was delivered to Dantzler and to Youngblood at Branchville did not show that they were to get additional orders or further copies of the same order at Orangeburg. They were not expecting such additional copies and hence their failure to get such copies could have had no causal relation to their failure to obey the order they already had.

Observe that if they had received the additional copies at the meeting point they would only have received extra copies of the same order already in their possession and under which Dantzler knew he was running and was obliged to meet Extra 723 at Orangeburg.

The failure to receive the extra copies at Orangeburg which were not expected by him, could not have been a cause of Engineer Dantzler's disobeying the order which he had. The most that can be said is that if he had received such extra copies they might have furnished him an additional motive for obeying the order which he was already obliged to obey.

Thus the recovery here rests upon the theory that the failure of petitioners to give again to the intestate copies of the meet order which he already had, and their failure thereby to prevent him from violating an order which he was already bound to obey was a negligent proximate cause of his disobedience of the order and of his resulting death.

What this Court said of such a theory in *Unadilla Valley R. Co. v. Caldine,* 278 U. S. 139, is here directly applicable:

> "Still considering the case as between the petitioner and Caldine, it seems to us even less possible to say that the collision resulted in part from the failure to inform Caldine of the telephone from train No. 15. A failure to stop a man from doing what he knows he ought not to do hardly can be called a cause of his act. Caldine had a plain duty, and he knew it. The message would only have given him another motive for obeying the rule that he was bound to obey."

So here, the doing of that the failure to do which is the negligence charged to support this recovery, *i. e.,* the giving to Dantzler of additional copies at the meeting point of the meet order which he already had, would have furnished him no additional information or instruction, would only have given him an additional motive for obeying the meet order that he was already bound to obey. The failure of petitioners to stop him from doing what he knew he ought not to do cannot be called a proximate cause of his act of disobedience, or of his resulting death. It seems a clear perversion of the Act to say that when the employer has given the employee a proper and positive order, upon obedience to which his life and the lives of others depend, that the employer can be visited with responsibility, as for negligence, for his death resulting directly from his disobedience of the order, simply because the employer did not give him the same order again. That is to extend the employer's liability to that of an insurer or guarantor.

On this point, the dissenting Justice, Cothran, well said on the first Youngblood appeal, 137 S. C. 47, 134 S. E. 660:

> "It is impossible that the failure of 483 to receive the duplicate copies of the order, if the order had been properly transmitted as a 31-5-copy order and

not as a 31-3-copy order, at Orangeburg, could have induced them to think that the order had been superseded or annulled. If these copies had been delivered to them they would not have had any more information than they already possessed from the orders which both conductor and engineer had received in Branchville and had in their pockets."

Failure of the Orangeburg Operator to Give Additional Verbal Instructions to the Same Effect as the Standing Written Order.

When intestate's engine, Extra 483, arrived at Orangeburg, the operator there reported its arrival by telephone to the dispatcher at Charleston. The dispatcher at Charleston testified that he told the Orangeburg operator over the telephone "to clear him and tell him to go to the west end of the pass track and wait on Extra 723" (R. 44).

The Orangeburg operator got this message, but understood it, in the form "clear him and let him go to the west end of the pass track." He understood this to mean go into the east end of the pass track and move up the pass track to the west end. And he testified that he did not deliver such verbal message to the train crew of Extra 483 because the Charleston dispatcher did not tell him to tell them anything (R. 64-65). To him the verbal message meant the same thing as, clear him, that is, drop the board, and let him obey his meet order.

It is undisputed on the record that there is no such thing as a verbal train order (R. 95, 96, 133) and that train orders must be in writing and that a written train order once in effect continues so until fulfilled, superseded or annulled by another written order (R. 133-134).

In so far as such verbal instructions, had they been given, would have told Conductor Youngblood and Engineer Dantzler to wait in the pass track for Extra 723,

they would merely have been a verbal repetition of the written meet order they already had. And, as to that, what we have said above with reference to failure to give additional copies of the order applies fully. Such verbal message would only have given the deceased an additional motive for obeying the written order he was already bound to obey. The failure to give such added motive cannot be the cause of his disobedience.

Besides, it would have been a bad and dangerous practice to attempt to give the verbal instructions suggested by the Charleston dispatcher. The record shows clearly that the verbal instructions as suggested by the Charleston dispatcher were ambiguous as to whether they meant to tell Dantzler's train to go in the east end of the passing track and up the passing track to the west end, or whether they meant to tell it to proceed up the main line to the west end of the passing track. The passing track was nearly a mile long (R. 72). To have given this ambiguous verbal instruction might have led Dantzler to proceed up the main line to the west end of the passing track, or practically a mile in the territory of the superior train, whereas the written meet order clearly limited Dantzler to entering the nearest or east end of the passing track.

Not only did the failure to give the ambiguous verbal instructions have no causal connection with the collision which occurred, but if they had been given and the collision had occurred on the main line between the east and the west ends of the passing track, the very giving of those verbal instructions would have been charged as railroad negligence.

Judge Cothran, in his dissent in the first Youngblood appeal, 137 S. C. 53, 70, made an unanswerable comment on this theory of employer negligence, saying, with reference to the omitted verbal instructions:

"Clearly this was an order, if it could be so considered, which the Train Dispatcher ran great risk in giving. Train 723 had the superior right of way from the west switch to the east switch of the passing track and that message required Youngblood to overlap the territory of 723 to that extent. If the collision had occurred between the two switches, much would have been made and, properly, of the indiscretion in such an order. Tyson would have been entirely justified in refusing to deliver it. Tyson cleared him to do what 483 was authorized under the rule to do; pass the semaphore and head into the east switch. How the failure to extend an order which should not have been given, could have caused Youngblood to disobey the meet order, refuse to enter the east switch which rules required him to do, refuse to enter the west switch which he was advised to do, and rush on upon an opposing train, is beyond my comprehension."

The Intestate's Negligent Violation of the Meet Order was the Sole Proximate Cause of His Death. The Recovery Cannot be Sustained Under Federal Decisions.

Even if it be assumed that there was any negligence of petitioners on any one or more of the theories of negligence upon which this recovery is sought to be supported, there is nothing to support a reasonable conclusion of efficient causal relation thereof to the collision and death. The only efficient, proximate cause, the only *causa causans,* was Dantzler's violation of a positive meet order.

This Court said in *Atchison, T. & S. F. R. Co., v. Toops,* 281 U. S. 351, where there was evidence of negligence but none of proximate causation:

"But proof of negligence alone does not entitle the plaintiff to recover under the Federal Employers' Liability Act. The negligence complained of must be the cause of the injury. The jury may not be permitted to speculate as to its cause, and the case must be withdrawn from its consideration unless there is

evidence from which the inference may reasonably be drawn that the injury suffered was caused by the negligent act of the employer." (citing cases.)

We submit that to sustain the verdict here on the theory that if extra copies of the meet order had been given the deceased at Orangeburg, or if the command of the meet order had been verbally repeated to him there, the collision might not have happened, would, as this Court said in the *Toops case, supra,* "remove trial by jury from the realm of probability, based on evidence, to that of surmise and conjecture."

The only thing that caused the collision and death here was the violation of the meet order. The whole theory of the respondent, and of the State Court, is that petitioners should be held liable, not because they did anything to cause the collision, but because they failed to do certain things which it is conjectured might have intervened to stop or effect the natural sequence of causation flowing from the intestate's violation of a positive order. Petitioners have been subjected to liability thus far because they did not prevent the intestate from doing what he had been ordered not to do and knew he should not do.

But such a theory does not square itself with accepted definitions of proximate causation:

> "The proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." 22 R. C. L. 110, sec. 2.
>
> "The active efficient cause that sets in motion a train of events which brings about a result without the intervention of any force started and working actively from a new and independent source."
>
> "That which originates and sets in motion the dominating agency that necessarily proceeds through other causes as mere instruments or vehicles in a natural line of causation to the result." 22 R. C. L. 111, 112, sec. 2.

"The dominent cause from which the injury follows as a direct and immediate consequence." *Brady v. Oregon Lumber Co.* (Ore.), 243 Pac. 96, 45 A. L. R. 822.

Everything charged against petitioners as negligence was a failure to do something *prior* to the time when Dantzler actively violated his meet order. Nothing so charged intervened after his negligence or was an active, efficient cause. On the contrary, the natural, continuous sequence flowing from his act in passing the meeting point, unbroken by any intervening act of petitioners, led necessarily to collision and death.

We think the decision of this Court in *Unadilla Valley R. Co. v. Caldine,* 278 U. S. 139, above quoted from, is controlling here. There the facts were substantially as follows:

The defendant railroad company, engaged in interstate transportation, operates trains on a single track from Richfield Junction, through Bridgewater and River Forks, to New Berlin, in the State of New York. Printed orders were issued to all employees: "Train No. 2 will pass train No. 15 at Bridgewater Yard", and "Train No. 15 will take turntable siding at Bridgewater to allow train No. 2 to pass." Unless countermanded in writing by the superintendent, these orders were permanent. They were not countermanded. Train No. 2 was a gasoline passenger car of which plaintiff's intestate, Caldine, was conductor, and Dibble was motorman. Train No. 15 was a freight train of which Risley was conductor. They collided head-on a short distance south of Bridgewater Yard, and Caldine was killed. There had grown up a custom by which Risley, the conductor of the freight train, if he was a little late, would telephone that fact from his last station before Bridgewater, and Dawson, the defendant's station agent at Bridgewater, would take this message and orally deliver it to Caldine, thus giving to him

a further warning that he must obey the rule. On this occasion the telephone message was sent, but Dawson omitted to inform Caldine. Dawson asserted that he did tell Dibble, the motorman, but Dibble denied this. At any rate, through somebody's negligence, the customary special notice and warning did not reach Caldine. Nevertheless, the conductor, in violation of printed orders, signaled the gasoline car to proceed, and the motorman, also in violation of them, obeyed the signal and started the car in plain sight of the station agent. The Court of Appeals of New York (246 N. Y. 365, 159 N. E. 172), in affirming the judgment in favor of the plaintiff in the trial court, said:

> "The conductor's negligence cannot be viewed as the sole proximate cause of the collision. The station agent could and should have prevented it; so could the motorman. All three were negligent. If Caldine had not signaled in violation of orders, the collision would not have occurred. Neither would it have happened if Dawson had communicated Risley's message to Caldine * * * Dawson knew that the freight was approaching; Dibble ought to have known it and should have kept his car stationary. Negligence was not solely Caldine's. His death resulted in part from the negligence of Dawson and Dibble."

This Court, in reversing the judgment of the New York Court of Appeals, said, pages 141-142:

> "The phrase of the statute, 'resulting in whole or in part,' admits of some latitude of interpretation and is likely to be given somewhat different meanings by different readers. Certainly the relation between the parties is to be taken into account. It seems to us that Caldine, or one who stands in his shoes, is not entitled as against the railroad company that employed him to say that the collision was due to anyone but himself. He was in command. He expected to be obeyed, and he was obeyed as mechani-

cally as if his pulling the bell had itself started the train. In our opinion he cannot be heard to say that his surbordinate ought not to have done what he ordered. He cannot hold the company liable for a disaster that followed disobedience of a rule intended to prevent it, when the disobedience was brought about by his own acts. See *Davis v. Kennedy,* 266 U. S. 147, 69 L. ed. 212, 45 Sup. Ct. Rep. 33.

"Still considering the case as between the petitioner and Caldine, it seems to us *even less possible to say that the collision resulted in part from the failure to inform Caldine of the telephone from Train No. 15. A failure to stop a man from doing what he knows that he ought not to do hardly can be called a cause of his act. Caldine had a plain duty, and he knew it. The message would only have given him another motive for obeying the rule that he was bound to obey.*" (Italics added.)

In comparing the facts of the *Caldine Case* with those of the present case, we submit there is no substantial distinction. An additional copy of the meet order delivered to Dantzler at Orangeburg or an additional verbal order to the same effect would only have given him another motive for obeying his train order, which he was already bound to obey at his peril.

The case of *Unadilla Valley Ry. Co. v. Dibble,* 31 F. (2d) 239, certiorari denied thereto, 280 U. S. 565, related to the same accident as that in the *Caldine Case, supra.* Dibble, the engineer, brought suit for damages on account of injuries received in the same collision in which Caldine, the conductor, was killed. The Circuit Court of Appeals of the Second Circuit, held that the engineer was not entitled to recover damages, and after quoting from the decision in the *Caldine Case,* the opinion continues, page 240:

"Now, between Dibble and the railway, Dibble is in the same position as Caldine. There was a rule made for the protection of each, and each violated it; Cal-

dine by his order, Dibble by his act. While it did not lie in Caldine's mouth, when he deliverately disobeyed the rule, to say that the accident was due to Dibble, it equally did not lie in Dibble's mouth, under identical circumstances, to say that the accident was primarily due to the neglect of Caldine. As against the railway, each was primarily responsible for the injury which befell him."

The case of *Great Northern Railway Co. v. Wiles*, 240 U. S. 444, 448, was an action for damages for the death of a brakeman, suit being brought under the Federal Employers' Liability Act. Wiles was a rear brakeman on a freight train, which came to a stop after passing a curve by reason of the breaking in two of a drawbar in one of the cars of the train. The freight train was followed shortly by a passenger train. The night was dark and the place of collision was obstructed by a sharp curve and a bluff, so that the rear end of the freight train could not be seen for more than five car lengths away. It was the duty of Wiles, under the rules of the railroad company, to go back and flag the following train. This he failed to do, but remained in the caboose, and was killed in the ensuing rear-end collision. In reversing the judgment for the plaintiff, this Court said:

"There is no justification for a comparison of negligences or the apportioning of their effect. The pulling out of the drawbar produced a condition which demanded an instant performance of duty by Wiles,—a duty not only to himself, but to others. The rules of the company were devised for such condition and provided for its emergency. Wiles knew them, and he was prompted to the performance of the duty they enjoined (the circumstances would seem to have needed no prompting) by signals from the engineer when the train stopped. He disregarded both. His fate gives pause to blame, but we cannot help pointing out that the tragedy of the collision might have been appalling. He brought death to himself and to

the conductor of his train. His neglect might have extended the catastrophe to the destruction of passengers in the colliding train. How impressive his duty was is manifest. To excuse its neglect in any way would cast immeasurable liability upon the railroads, and, what is of greater concern, remove security from the lives of those who travel upon them; and therefore all who are concerned with their operation, however high or low in function, should have a full and an anxious sense of responsibility.

"In the present case there was nothing to extenuate Wiles's negligence; there was nothing to confuse his judgment or cause hesitation. His duty was as clear as its performance was easy. He knew the danger of the situation and that it was imminent; to avert it he had only to descend from his train, run back a short distance, and give the signals that the rules directed."

Applying the reasoning in this decision to the facts in the case at bar, there was nothing to extenuate Engineer Dantzler's negligence. He knew the requirements and directions of the written order in his possession, and he knew the rule which provided that the inferior train must take the siding at the meeting point, and after he was cleared by the semaphore all that he had to do to fulfill his meet order and avert the collision was to head in the east switch of the passing track, or back in at the west end, and await the arrival of Extra 723. Certainly, as was said in the *Wiles Case,* "his duty was as clear as its performance was easy." And in the instant case the tragedy of the collision was truly "appalling", for Engineer Dantzler and the conductor of his train, in failing to obey their meet order, brought death not only to themselves, but also to three members of the unoffending crew of the opposing train,—the conductor, engineer and fireman.

In the case of *Virginian Railway Co. v. Linkous,* 230 Fed. 88, reaffirmed on rehearing, 235 Fed. 49; certiorari

thereto denied, 242 U. S. 630, the intestate was engineer of train 468 moving east, and was killed in a head-on collision with another train 33, moving west. He and his conductor had received a meet order for train 33 at a certain point. Three other employees, including the conductor, were riding in the cab of the engine, and all had notice of the meet order, copies of which were found upon their persons after the collision. Train 468, of which Linkous was engineer, ran by the meeting point without heeding the meet order, and collided with train 33 a short distance east of the meeting point. The plaintiff contended that the collision was not solely the result of the negligence of the engineer, but was "in part" due to the negligence of the other employees who were riding on the engine and had notice of the meet order. The Court denied the contention, holding that the engineer was directly responsible for the collision, and that the plaintiff could not come within the provisions of the Federal Employers' Liability Act by relying upon the alleged negligence of the companions of the engineer.

In *Frese v. Chicago, B. & Q. R. Co.*, 263 U. S. 1, 3, the intestate was the engineer of a train which collided with another at a grade crossing of the two railroads. Both trains stopped in compliance with a State statute, but did not discover each other and pulled ahead and collided, killing Frese. Frese's view of the other track was obstructed intermittently until the crossing was reached, and his administratrix contended that she was entitled to recover under the Federal Employers' Liability Act upon the ground that there was evidence of negligence on the part of the fireman, who was sitting on the side toward the other approaching train, in not discovering the presence of the other train and warning the engineer; and that, even if Frese was negligent, such negligence would not completely bar a recovery. In denying a recovery on behalf of the engineer, this Court held that there was no evidence of negligence on the part of the fireman, and,

if there had been, the result would have been the same, saying:

> "Moreover, the statute makes it the personal duty of the engineer positively to ascertain that the train can safely resume its course. Whatever may have been the practice, he could not escape this duty, and it would be a perversion of the Employers' Liability Act * * * to hold that he could recover for an injury primarily due to his failure to act as required, on the ground that possibly the injury might have been prevented if his subordinate had done more."

Manifestly the word "subordinate", used in this last sentence, is merely a term of identification. The meaning would have been no different if the word "fireman" had been used. If the conductor had been the engineer's companion, the rule would have been the same as in the *Linkous Case,* although not a subordinate.

A very exhaustive and clear opinion on the negligence of a railroad employee holding it to be his sole negligence where a collision occurred by reason of the violation of a train order, is that in *Davis v. Payne,* 108 Ore. 72, 216 Pac. 185; certiorari thereto denied, 263 U. S. 720. In that case it was alleged, as grounds for recovery, that the conductor and fireman of Davis's train also had copies of the order, the violation of which caused the collision, and that the conductor, when at Carvallis, negligently gave Davis instructions to proceed; that the conductor at any time could have stopped Davis by turning on the air in the caboose; that the order should have read "Cook to Oswego" instead of "Beaverton to Oswego"; and that the order should have been given to the plaintiff at Oswego instead of at Portland, the starting point. Also, that a "meet order" should have been given, requiring No. 231 to be held at Oswego until No. 234 arrived there. These, in substance, were the various allegations of negligence in the complaint. The action was tried under the Federal Employers' Liability Act.

The answer denied any negligence, and affirmatively alleged that the plaintiff's injury was caused solely by his own negligence in disregarding and refusing to obey the written order above referred to, which was: "No. 234, engine 2911, has right over No. 231, Beaverton to Oswego." The trial resulted in a verdict of $25,000.00, and judgment thereon, from which an appeal was taken to the Supreme Court of the State of Oregon. This judgment was reversed and a judgment ordered in favor of the defendant, the Court saying in its opinion:

> "The plaintiff was charged with the primary responsibility of moving the train, and it was his hand alone that moved the train from Oswego to the place of the wreck. In doing this he violated train order No. 226 and rules No. 83(b) and No. 906. He had no right to leave Oswego until he received a memorandum from the conductor, and it was his own act, and his act alone, which produced the injury he complains of * * * He brought about the death of the engineer on train No. 234 who was rightfully proceeding from Cook to Oswego, and who was acting in strict conformity to train order No. 226. To hold that Congress intended by the Federal Employers' Liability Act, under the circumstances disclosed in this case, to penalize the carrier, and to reward the disobedient employee with a judgment against the carrier for $25,000.00, is unthinkable, and until such a construction is placed upon that Act by the Federal Courts, this Court ought not to uphold this judgment * * *
>
> "Plaintiff having been notified that train No. 234 had a superior right over his train, between the stations of Oswego and Cook, it was his duty to remain at Oswego until the arrival of the superior train, and the carrier was under no obligation to repeat the order at Oswego, or to inform him when the superior train left Cook."

It was contended by the plaintiff in that case that the operator at Oswego was negligent in giving Davis a clear signal. (The respondent in the case at bar seems to rely

upon the identical contention.) In answering that contention, the Oregon Supreme Court said:

> "This contention has no merit. The dropping of the bar by the dispatcher could give him no right to proceed contrary to orders previously received. The only effect of this signal was to inform him that the dispatcher at Oswego had no order in his hands for the conductor and engineer of the train. The signal given by the operator did not supersede, or in any way change or modify the effect of, the order previously given * * * The order previously given could only be revoked by a subsequent order, and when the operator signaled that he had no order for train No. 231, plaintiff knew that the previous order had not been revoked, countermanded, or superseded."

In the case at bar, it likewise was the personal duty of the engineer, Dantzler, positively to ascertain whether he had fulfilled his meet order by passing the other train and it was his positive duty to obey the meet order. He was, jointly with the conductor, charged with the safe movement of the train and the observation of the rules (Rules 105 and 1137, R. 177, and 184), and they were jointly charged with the primary duty of fulfilling the meet order in their possession.

In the case of *Yadkin Railroad Co. v. Sigmon,* 267 U. S. 577, as appears from the decision of the Supreme Court of North Carolina (186 N. C. 519, 120 S. E. 56), the administratrix had recovered damages for the death of an engineer in a head-on collision occurring after his train had passed a station without observing a meet order. It was held by the state court that, although the decedent engineer was negligent in failing to obey the meet order, it was also the duty of the conductor and flagman, when they found the engineer had gone contrary to orders, to signal the train to stop. Both the conductor and the flagman apparently forgot the order, and did not so signal the engineer. Instead of thus reminding the engineer of

his obligation, the flagman pulled the signal cord giving the engineer the signal to go ahead, and the conductor, although apparently observing him do so, did not interfere. The Supreme Court of North Carolina held that their negligence was a contributory cause of the death of the engineer, and that the jury was therefore empowered, under the Federal Employers' Liability Act, to apportion the recovery according to the ratio which they found should exist between the causal effect of the contributory negligence of the engineer and that of the defendant railroad company in the conduct of its conductor and flagman. This Court reversed this decision and remanded the cause for further proceedings, upon the authority of *Davis v. Kennedy*, and *Frese v. Chicago, B. & Q. R. Co.*, *supra*.

In *McDonald v. Great Northern R. Co.*, (Minn.) 207 N. W. 194, the engineer, McDonald, was killed in a head-on collision. He and the conductor, McCabe, had both received a meet order. Before the train which they were to meet at a certain station had arrived, the engineer signaled the conductor that he was ready to proceed. The conductor signaled him ahead. Both had forgotten their orders. The plaintiff sought to come within the protection of the Federal Employers' Liability Act by reliance upon the negligence of the conductor in signaling the engineer ahead, as contributory "in part" to the disaster. The plaintiff had a verdict in the trial court, and, upon appeal, the Supreme Court of Minnesota reversed the judgment of the trial court, saying:

> "Both the engineer and conductor had a duty, personal to himself, to see to it that order 56 was not violated. Its violation by McDonald, in the absence of some other intervening and efficient cause, was negligence which continued to the place of collision, and was the producing cause of the accident. The fact that McCabe was also guilty of negligence in his silent permission in allowing the engineer, who was

> the primary wrongdoer, to violate the order, will not permit plaintiff to recover upon the theory that McCabe's negligence was a contributing cause. To so hold would permit the anomaly of an employee violating orders proximately resulting in his own injury to recover *upon the theory that if some other employee had done his duty and prevented the violation the injury would not have occurred.*" (Italics added.)

A case in which the concurring negligence relied on was not that of an associate or subordinate of the plaintiff, but of an employee in another department, is *Southern Railway Co. v. Hylton,* 37 F. (2d) 843, certiorari denied, 281 U. S. 745, wherein the Circuit Court of Appeals of the Sixth Circuit held that the engineer's disobedience of the train dispatcher's order to look out for a steel gang laying rails was the sole efficient cause of the derailment resulting in his death, notwithstanding the negligence of the track gang foreman in failing to send out a warning flag far enough up the track to enable the train under fair control to stop, as required by a rule or by custom.

In a well considered opinion by Circuit Judge Wilbur in the case of *Bradley v. Northwestern Pac. R. Co.,* 44 F. (2d) 683 (C. C. A., 9th Ct.), the Federal decisions were reviewed and a recovery denied for the death of an engineer who failed to obey an order to meet an extra freight at a certain point, notwithstanding the conductor failed to give warning by whistle as required by the rules of the railroad company.

In the case of *Paster v. Pennsylvania R. Co.,* 43 F. (2d) 908, the Circuit Court of Appeals for the Second Circuit reversed a judgment in favor of a car repairer who was injured while violating the rule requiring him to place blue flags. It held, under authority of the recent decisions of this Court, that the disregard by the servant of specific orders or standing rules, promulgated for his own safety, will bar his recovery although the injury was due also to the fault of other servants.

In our present case it will be recalled that there is no allegation or contention of employer negligence based on negligence attributed to the conductor of intestate's train, or to any other member of its crew, or to any member of the crew of the train collided with.

There is no logical escape from the conclusion that the decedent engineer's death was directly and proximately due to the running of his train beyond Orangeburg, the meeting point, in violation of train order No. 18 which he received at Branchville, and that there was no negligence on the part of the crew of the other train in the collision. It seems to us clear that it would be a perversion of the statute to allow his representative to recover upon the theory that if other employees had done their full duty they might possibly have prevented Dantzler from violating his train order. The order in Engineer Dantzler's possession, and under which he had run his train from Branchville to Orangeburg, contained all the information that he would have had from getting a copy of the order at Orangeburg, and from a further direction from the operator there to take the side-track—directions purely cumulative—disclosing nothing more than he already knew, and in no way changing or superseding his order. The operator at Orangeburg cleared Engineer Dantzler by the semaphore to do what he was authorized and required to do under the terms of his train order, and when he passed this semaphore and failed to run his engine in the east end of the passing track, declined the fireman's suggestion to back in at the west end, but proceeded on the main line through the station yard and beyond, he set in motion the instrument of death, and from that moment to the time of the collision resulting in his death there was no intervening negligent act on the part of any of the "officers, agents, or employees" of the petitioners that contributed in any degree to the accident. The negligence of the intestate engineer continued from the inception of his violation of his meet order up to the

moment of the fatal collision, and was unbroken and uninfluenced by any act or neglect of petitioners.

Whether Dantzler's disregard of his train order was intentional or attributable to mental aberration, and whether such reminder and additional motive would have prevented him from violating his order, can only be surmised and at best are matters of guesswork. The inescapable fact remains that he himself did violate the plain terms of his positive meet order, and received his fatal injuries as the direct result of that violation.

POINT II.

THE ENTIRE EVIDENCE HEREIN SHOWS THAT THE INTESTATE VOLUNTARILY EXPOSED HIMSELF TO RISKS AND DANGERS SO OPEN AND OBVIOUS THAT NO ORDINARILY PRUDENT MAN WOULD HAVE CONTINUED TO FACE THEM, AND HE ASSUMED THE RISK OF HIS DEATH.

There is no charge made in this case that petitioners violated any Act of Congress enacted for the safety of employees (45 U. S. C. 54). Hence the defense of assumption of risk remains in full force as at common law.

Missouri P. R. Co. v. David, No. 365, October Term, 1931, decided Feb. 15, 1932;
Toledo, St. L. & W. R. Co. v. Allen, 276 U. S. 165;
Atlantic C. L. R. Co. v. Southwell, 275 U. S. 64;
St. L. S. F. R. Co. v. Mills, 271 U. S. 344;
Chesapeake & Ohio R. Co. v. Nixon, 271 U. S. 218;
Boldt v. Pennsylvania R. Co., 245 U. S. 441;
Seaboard A. L. Ry. v. Horton, 233 U. S. 492.

As applied to actions under the Federal Employers' Liability Act, it is held that the employee assumes all the ordinary risks and hazards of his occupation, whether appreciated by him or not, and likewise assumes extraor-

dinary risks and hazards known to and appreciated by him, even though caused by the master's negligence.

Chi., R. I. & P. Ry. Co. v. Ward, 252 U. S. 18

We appreciate that a distinction has always been drawn in general between assumption of risk and contributory negligence under the statute.

Pryor v. Williams, 254 U. S. 43;
Chesapeake & O. R. Co. v. De Atley, 241 U. S. 310;
Seaboard A. L. R. Co. v. Horton, 233 U. S. 492.

This Court stated the distinction thus in the *Horton Case, supra:*

> "The distinction, although simple, is sometimes overlooked. Contributory negligence involves the notion of some fault or breach of duty on the part of the employee, and since it is ordinarily his duty to take some precaution for his own safety when engaged in a hazardous occupation, contributory negligence is sometimes defined as a failure to use such care for his safety as ordinarily prudent employees in similar circumstances would use. On the other hand, the assumption of risk, even though the risk be obvious, may be free from any suggestion of fault or negligence on the part of the employees."

However, this Court did not say that assumption of obvious risks *must* be free from the suggestion of fault or negligence on the part of the employee, or that the defense of assumption of risk cannot exist if negligence of the employee contributed to the risk.

If that were the necessary implication of the distinction it would put a premium on the negligence of the employee, since an employee would be barred of recovery as having assumed even unusual and extraordinary risks if known to him, provided no negligence of his own helped create the risks; but, if the very same kind of risks were contributed to by his own positive negligence, he would not

be barred but would be entitled to a comparison of negligences.

We submit that the distinction becomes tenuous to the point of substantial non-existence when the risks and hazards of the work immediately engaged in, whether caused by the negligence of the master alone, or by that of the employee alone, or by the concurrence of both, are not only fully known to and appreciated by the employee but also so open and obvious that no man of ordinary prudence would continue in the face of the danger.

We believe the Court of Appeals of Kentucky suggested the proper solution of the apparent paradox, in *Chesapeake & O. R. Co. v. De Atley,* 159 Ky. 687, 167 S. W. 933, 935, reversed on other grounds, 241 U. S. 310, when it said:

> "Notwithstanding this distinction, it is generally held that assumption of risk and contributory negligence frequently approximate where the danger is so obvious and imminent that no ordinarily prudent man would assume the risk of injury therefrom. Narramore v. Cleveland, etc., R. Co., 96 Fed. 298."

We submit that the risks and dangers of running an inferior train, on a single track railroad, in a dense fog which obscured visibility, in the direction of a superior train known to be approaching from the opposite direction, and known not to expect the inferior train to be where it was, and in clear violation of a positive meet order, were so open and obvious that no man of ordinary prudence would have engaged in such a hazardous enterprise. If Dantzler could conceivably have been engaged in such an undertaking with full knowledge of the risks, but without fault of his own, it seems clear under the decisions that he would have assumed the risks and that his administratrix would have been barred of recovery.

We do not believe the statute intended that the administratrix should be in better position to recover merely

because her intestate's negligent and reckless conduct in disobeying a written meet order produced the very situation of open and obvious danger and peril in which he found himself.

We submit that the judgment below should be reversed on the ground that respondent's intestate assumed the risk of his death, as well as on the ground that the sole proximate cause of his death was his own negligence.

POINT III.

THE SUPREME COURT OF SOUTH CAROLINA MISINTERPRETED THE FEDERAL EMPLOYERS' LIABILITY ACT IN UPHOLDING A RECOVERY OF SUBSTANTIAL DAMAGES IN THE ABSENCE OF PROOF OF WHAT PECUNIARY ASSISTANCE OR SUPPORT THE NAMED BENEFICIARIES MIGHT REASONABLY HAVE EXPECTED TO RECEIVE FROM THE DECEASED EMPLOYEE HAD HE LIVED.

It is the contention of petitioners that, in any view of this case, there was not sufficient evidence on which the jury could base an award of damages, and hence that the State Supreme Court erred in sustaining the trial court's refusal to grant petitioners' motion for a directed verdict on this ground.

In an action under the Federal Employers' Liability Act for death, the damages can only be compensatory, and the measure of them is what the beneficiaries named in the statute necessarily lose by the death of the deceased employee. Unless the plaintiff shows that the qualified beneficiaries have been deprived of a reasonable expectation of pecuniary benefits by the wrongful death of the injured employee, there can be no recovery.

In the case of *Michigan Central R. Co. v. Vreeland*, 227 U. S. 59, 70, it was held that only the pecuniary loss or

damage is allowable, and that loss is not dependent upon any legal liability of the injured person to the beneficiaries. That may be one, but it is not the sole, test. "There must, however, appear some reasonable expectation of pecuniary assistance or support of which they have been deprived."

In *Gulf, C. & S. F. Ry. Co. v. McGinnis*, 228 U. S. 173, 175, this Court, in overruling the decision of the Texas Court of Civil Appeals, said:

> "The Court of Civil Appeals upheld this ruling, saying that the Federal 'statute expressly authorized the suit to be brought by the personal representative for the benefit of the surviving wife and children of the deceased, irrespective of whether they were dependent upon him, or had the right to expect any pecuniary assistance from him.' 147 S. W. 1189. This construction of the character of the statutory liability imposed by the Act of Congress was erroneous. In a series of cases lately decided by this Court, the Act in this aspect has been construed as intended only to compensate the surviving relatives of such a deceased employee for the *actual pecuniary loss* resulting to the particular person for whose benefit an action is given. The recovery must therefore be limited to compensating those relatives for whose benefit the administrator sues *as are shown* to have sustained some pecuniary loss." (Italics added.)

In the case at bar, the respondent merely testified as to the ages of the intestate and herself and her sixteen year old minor child and as to the amount her intestate was earning at the time of his death. There was not a scintilla of evidence that she or her child were dependent upon him for support. There was no testimony as to the deceased's or as to his widow's expectancy of life, or as to the expectancy of the child, not even the mortuary tables being introduced in evidence. There was no evidence as to the amount of the contributions made to the respondent and the child by the deceased out of his earnings.

The respondent's entire testimony in this regard was as follows (R. 6):

> "He was forty-one years old at the time of his death, and left surviving him myself, as his widow, and one son, John Lawrence Dantzler, who was sixteen years of age. My age at that time was forty-one, the same as my husband. My husband was working regularly for the Southern Railway Company, and the condition of his physical health was good. During our married life he never lost any time on account of sickness."

> "Q. Mrs. Dantzler, what wages did he draw as locomotive engineer for the railroad?
> A. You mean by the year?
> "Q. Well, have you any memorandum with you of his income tax return?
> A. Yes, sir.
> "Q. That is for the year 1923?
> A. Yes, sir, the year before his death.
> "Q. That shows that the amount paid him for the year 1923 was $2,650.22?
> A. Yes, sir.
> "Q. That is correct, isn't it?
> A. Yes, sir, that is a copy of his return."

The damages, if any, recoverable in this action are necessarily based entirely upon the deprivation of future pecuniary benefits which the respondent and her child might have received from the intestate had he lived and there was an utter absence of proof that the deceased engineer contributed any amount out of his wages to the beneficiaries for their support, or that they had a reasonable expectation of pecuniary benefits from a continuation of his life, and there was no evidence from which the jury could estimate any monetary loss to the beneficiaries by reason of the death.

The jury were left to make a complicated calculation involving the life expectancy of the deceased, the life ex-

pectancy of the beneficiaries, the usual contributions made by the deceased to the beneficiaries out of his earnings, and the reduction of the reasonably expected contributions for the periods of life expectancy to a present value, when all the elements necessarily entering into the computation were entirely missing except the bare fact as to the amount of money earned by the deceased the last year of his life.

In the case of *Nashville, C. & St. L. R. Co. v. Anderson*, 134 Tenn. 666, 185 S. W. 677, an action under the Federal Employers' Liability Act, the deceased employee left a widow and infant child. We quote from the opinion of the Tennessee Supreme Court as follows:

> "The pecuniary loss of these beneficiaries was not what the deceased might have earned, but what part of his earnings they might reasonably have expected to receive.
>
> "Further, it seems very clear from a study of the decisions of the Supreme Court of the United States * * * that there must be evidence of pecuniary damage before such damage can be allowed. This rule is enforced with more strictness by the Supreme Court of the United States, perhaps, than by some of the State courts in jurisdictions where acts fashioned after Lord Campbell's Act prevail.
>
> "In this case deceased's age, expectancy, and earning capacity were proven. *It was also proven that his wife and child were dependent upon him for support. There was no proof, however, as to the value of his customary contributions to the support of these beneficiaries, and nothing to indicate what such beneficiaries might reasonably have expected from him in the way of support.*
>
> "In this case it was only shown that the beneficiaries of this suit had sustained a loss. *There was no proof as to the extent of the loss. There was proof of the earning capacity of the deceased and his expectancy, but there was nothing to show what these beneficiaries might reasonably have expected to receive from the deceased, and under such circum-*

stances, under the rules laid down in the late Supreme Court cases, no recovery for more than nominal damages could stand.

"The elements of damage to be considered by the jury are indicated in the foregoing authorities. *There must be proof to show the reasonable expectation. Under the reasoning of the Supreme Court decisions, the widow's expectancy of life should be taken into account in estimating her loss.*" (Italics added.)

CONCLUSION.

For the reasons assigned in the petition for certiorari, and because of the facts and the law set out in this brief accompanying said petition, we respectfully submit that the writ of certiorari should be granted, and that, after full consideration by this Court, the judgment and decision of the Supreme Court of South Carolina herein should be reversed and judgment be entered in the cause for your petitioners.

Respectfully submitted,

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S. R. PRINCE,
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SUPREME COURT OF THE UNITED STATES.

No. 787.—October Term, 1931.

Southern Railway Company, et al., Petitioners, *vs.* Mary Elizabeth Dantzler, Administratrix. } On Writ of Certiorari to the Supreme Court of South Carolina.

[May 16, 1932.]

Mr. Justice Roberts delivered the opinion of the Court.

This is a companion case to No. 788, decided this day. The respondent's intestate was the engineer of the train known as Extra 483 West. He had on his person after the accident his copy of the orders received at Branchville. The negligence claimed is practically the same as in No. 788, and none is alleged as against any member of the decedent's crew or that of the train with which his engine collided. After the accident Dantzler was taken to a hospital, where before his death he stated to two persons that the accident was his fault—that he forgot his orders and ran past the point where he was directed to pass the other train.

For the reasons given in the opinion in No. 788 the judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.